



# RICHLAND COUNTY COUNCIL

## DEVELOPMENT AND SERVICES COMMITTEE

Bernice G. Scott  
District 10

Damon Jeter  
District 3

Norman Jackson, Chair  
District 11

Kit Smith  
District 5

Bill Malinowski  
District 1

*October 28, 2008*  
*4:00 PM*

**Richland County Council Chambers**  
**County Administration Building**  
**2020 Hampton Street**  
**REVISED**

### **Call to Order**

### **Approval of Minutes**

1. September 23, 2008: Regular Meeting [Pages 3 – 5]

### **Adoption of Agenda**

### **Items for Action**

2. Request to accept a conservation easement from Ms. Cindy Bollinger for the preservation of 20 acres (District 1) [Pages 6 – 21]
3. Request to accept a conservation easement from Ms. Mary Bradley for the preservation of 289 acres (District 10) [Pages 22 – 38]
4. Request to accept a conservation easement from Mr. Kenneth Clark for the preservation of 18 acres (District 2) [Pages 39 – 54]
5. Request to accept a conservation easement from Mr. Steve Corboy for the preservation of 40 acres (District 7) [Pages 55 – 70]
6. Request to accept a conservation easement from Mr. Calvin Koon for the preservation of 40 acres (District 1) [Pages 71 – 86]
7. Request to accept a conservation easement from Mr. G.P. Monroe for the preservation of 17.5 acres (District 9) [Pages 87 – 103]

8. Request to accept a conservation easement from Mr. Phillip Reddick for the preservation of 14 acres (District 1) [Pages 104 – 119]
9. Request to accept a conservation easement from Mr. Royal Roseberry for the preservation of 47 acres (District 9) [Pages 120 – 134]
10. Request to authorize the County Administrator and Community Development Department to move forward with the development of partnerships with County/City/Local CDCs in an effort to address residential and economic impact projects [Pages 135 – 136]
11. Request to adopt the incorporation of the Neighborhood Stabilization Program Fund (NSP) program into the Richland County Community Development Block Grant Program (CDBG) [Pages 137 – 139]
12. Request to approve a temporary public display of historic aircraft at the Owens Downtown Airport [Pages 140 – 141]
13. Consideration of options for the enforcement of digital on-premise display signs [Pages 142 – 150]
14. Request to approve the use of accrued interest from the Broad River Sewer bond issue toward the completion of the construction project [Pages 151 – 152]
15. Request to approve a Memorandum of Agreement (MOA) between Richland County and Richland County School District One for the development of the Hopkins Community Water Project [Pages 153 – 159]

**Items for Discussion / Information**

16. Geometrics Dirt Road Pave-in-Place Program *(Jackson)*
17. Update from Central Midlands Regional Transit Authority (CMRTA) *(Jeter)*
18. Comparison of transit service, funding, and efficiency in Columbia and other peer communities *(Malinowski)*
19. Motion to require that CMRTA bid out the system operations contract ***(Legal Advice: Eligible for discussion in executive session)*** *(Jackson)*
20. Motion regarding the SCE&G Landfill *(Jackson)*  
***(Legal Advice: Eligible for discussion in executive session)***

**Adjournment**

*Staffed by: Joe Cronin*

**Richland County Council  
Development and Services Committee  
September 23, 2008  
5:00 PM**



*In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building.*

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**Members Present:**

Chair: Norman Jackson  
Member: Damon Jeter  
Member: Bill Malinowski  
Member: Bernice G. Scott  
Member: Kit Smith

**Others Present:** Joseph McEachern, Valerie Hutchinson, L. Gregory Pearce, Jr., Paul Livingston, Joyce Dickerson, Michelle Cannon-Finch, Milton Pope, Tony McDonald, Roxanne Matthews, Joe Cronin, Larry Smith, Joseph Kocy, Donny Phipps, Geo Price, Amelia Linder, Brian Cook, Tamara King, Teresa Smith, Valeria Jackson, Monique Walters, Michelle Onley

**CALL TO ORDER**

The meeting was called to order at approximately 5:00 p.m.

**APPROVAL OF MINUTES**

**July 22, 2008 (Regular Session)** – Mr. Malinowski moved, seconded by Mr. Jeter, to approve the minutes as distributed. The vote in favor was unanimous.

**ADOPTION OF AGENDA**

Mr. Pope stated that the lettering under the Items for Discussion/Information need to be corrected.

Mr. Jeter moved, seconded by Ms. Scott, to adopt the agenda as corrected. The vote in favor was unanimous.

## ITEMS FOR ACTION

**An ordinance amending the Richland County Code of Ordinances; Chapter 26, Land Development; Section 26-104, FP Floodplain Overlay District; Subsection (D), Standards in the Floodplain; Paragraph (2), Specific Standards; Subparagraph (J), Fill; so as to allow the use of fill in the floodplain** – Mr. Malinowski moved, seconded by Mr. Jeter, to forward staff's recommendation and the definitions for necessary infrastructure and essential utilities to Council with a recommendation for approval. A discussion took place.

The vote in favor was unanimous.

**Consideration of alternatives for an ordinance amending the Richland County Code of Ordinances; Chapter 26, Land Development; Article III, Administration; Section 26-34, Development Review Team; Subsection (A), Establishment/Duties; and Article IV, Amendments and Procedures; Section 26-59, Planned Development Review/Approval; Subsections (D) and (K), so as to remove the requirement of Development Review Team Review prior to PDD approval and to specify what when a PDD district expires, it reverts to the previous zoning district classification** – Ms. Smith moved, seconded by Mr. Malinowski, to forward Option #1: *“An ordinance that would amend the language to read that if the applicant has not applied for appropriate state and federal permits and does not have site plan or sketch plan approval (for the entire tract of land that comprises the PDD) from the county within two (2) years of the enactment of the PDD District zoning, then the development approval shall automatically expire and the property shall revert to the zoning district classification that was in effect immediately prior to the establishment of the PDD District.”* to Council with a recommendation for approval. A discussion took place.

The vote in favor was unanimous.

**POINT OF PERSONAL PRIVILEGE** – Mr. Jeter recognized that City of Columbia Councilman Kirkman Finley was in the audience.

Ms. Scott moved to give unanimous consent to suspend the rules to allow Mr. Finley to speak regarding the Stormwater Ordinance amendments. The vote in favor was unanimous.

### **Stormwater Ordinance Amendments:**

- 1. An ordinance amending the Richland County Code of Ordinances; Chapter 12, Garbage, Trash and Refuse; Article II, Collection and Disposal; Section 12-16, Yard Trash and Other Household Articles**
- 2. An ordinance amending the Richland County Code of Ordinances; Chapter 26, Land Development; so as to improve Richland County's water quality, protect the environment, and comply with the county's National Pollution Discharge Elimination System (NPDES) permit requirements**

Ms. Smith moved, seconded by Ms. Scott, to forward this item to the October 21<sup>st</sup> meeting with a recommendation for approval and to hold a Special Called Committee meeting on October 20<sup>th</sup>. A discussion took place.

Ms. Smith moved, seconded by Mr. Malinowski, to forward this item to Council with a recommendation for approval, by title only, and to schedule a work session prior to Second Reading. The vote in favor was unanimous.

**Alternative Dirt Road Paving Program** – Mr. Malinowski moved, seconded by Ms. Smith, to forward Alternative #1 (*“Allow County staff the autonomy to work with the consultant to correct and/or define, the reports details for implementation and to alter the recommendations, as generally outlined by Council”*) to Council with a recommendation for approval. The vote in favor was unanimous.

#### ITEMS FOR DISCUSSION/INFORMATION

**Community Development Corporation Update** – Mr. Malinowski requested that this item be placed on the October Committee agenda for action.

**Corridor Study Policy Update** – No action was taken.

**Mobile Home Maintenance Update** – Mr. Jeter requested that this item be placed on the October Committee agenda for action.

**On-Premises Signs Update** – Ms. Smith requested that this item be placed on the October Committee agenda for action.

**Discussion of Transit Funding** – Mr. Jeter requested that the CMRTA make a presentation at the next Committee meeting regarding this item.

#### ADJOURNMENT

The meeting adjourned at approximately 5:56.

Submitted by,

Norman Jackson, Chair

The minutes were transcribed by Michelle M. Onley

## Richland County Council Request of Action

**Subject:** Conservation Easement - Bollinger

### **A. Purpose**

County council is requested by the Conservation Commission to accept a conservation easement on 20 acres as a donation in northwest Richland County near the Broad River off Lost Creek Road in order to protect valuable farmland, natural resources, water quality, wildlife, and preserve valuable open space.

### **B. Background / Discussion**

The Bollinger Family has made a formal application to the Conservation Commission to help protect his valuable family farm, natural resources, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for agriculture, timber, wildlife, and scenic beauty. The property is a critical segment of the Broad River floodplain. The property faces development pressures to be converted to high density sub-divisions. The property is located in County Council District #1 where extensive development has occurred. The Bollinger Family would like to contribute to a new conservation image for their community. We salute their donation and conservation values.

### **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating 100% of the appraised easement value of which some may be captured by tax incentives. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space in a floodplain area of Broad River.

### **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space for all citizens. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

### **E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 20 acres owned by Cindy Bollinger.

**Recommended by:**

**Department:**

**Date:**

Maxey Love, Chair

Conservation Commission

9-22-2008

Jim Wilson, Program Manager

Richland County

9-22-2008

## F. Reviews

### Finance

Reviewed by: Daniel Driggers

Date: 10/23/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Approval based on recommendation of Conservation Commission.

### Legal

Reviewed by: Larry Smith

Date: 10/23/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

### Administration

Reviewed by: Tony McDonald

Date: 10/23/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation:





## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this \*\* day of December, 2008, by Cindy Bollinger having an address as Route 1, Irmo South Carolina, 29036, to Richland County, ("Grantee").

### **WITNESSETH:**

Grantor is the owner of certain real property in Richland County, South Carolina more particularly described below (the "Property").

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms are defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses that may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- The furtherance of the South Carolina Conservation Easement Act, §27-8-10 which authorizes the acquisition of conservation easements by non-profit organizations;

- The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.
- The protection of water quality deriving from the Property's location near the Broad River, which provides a source of drinking water and recreation for the Midlands of South Carolina.
- The protection of cultural resources identified as the River Alliance, a coalition of local governments, to ensure the continued enjoyment and preservation of the Broad River.
- The preservation of the Property as significant wildlife habitat and traditional hunting lands in this habitat rich area.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, hunting, or historic resources of the Property are collectively referred to herein as the "conservation values" of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Present Condition Report (the "Report") prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and §27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

#### NEED PROPERTY DESCRIPTION

### **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property as defined by the South Carolina Conservation Easement Act of 1991, of the nature and character described herein. Grantor will neither perform, nor knowingly allow another person to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

## **2. Statement of Purpose**

The Purpose of this Easement is to preserve the historically significant attributes of the Property and enable the Property to remain in traditional use by preserving and protecting its historic, scenic and rural nature and its other conservation and wildlife habitat features. No activity that significantly impairs the conservation values of the Property shall be permitted. To the extent that the preservation and protection of the natural, recreational or habitat values referenced in this Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

## **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and bequest the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

## **4. Limitation on Subdivision and Development**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. Except as provided in Section 9 herein, subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels is prohibited. There shall be no multi-family, industrial, or commercial use of the Property.

## **5. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural, recreational, and hunting purposes or to permit others to use the Property for agricultural, recreational and hunting purposes, in accordance with applicable law.

## **6. Right to Privacy**

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

## **7. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products;

farm machinery repair; or firewood distribution, recreational and commercial hunting, fishing and trapping, so long as such uses are not inconsistent with the Purpose of this easement.

## **8. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

## **9. Subdivision and Construction of Buildings and Other Improvements**

Grantor may subdivide and make improvements on the Property only as provided in this Section. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or other improvement of buildings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its records current.

- 1) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.
- 2) New Ancillary Structures & Improvements – New ancillary buildings and other structures and improvements to be used primarily for agricultural, equestrian or educational purposes may be built on the Property only with the permission of the Grantee.
- 3) Grantor may not subdivide the Property.
- 4) There may be no residential, commercial or industrial structures built on the Property.
- 5) Recreational Improvements – Grantor may construct blinds, stands and other facilities for viewing and/or hunting wildlife. Other passive recreational improvements may be built with the permission of the Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property or may the Property be used for for a use inconsistent with the Purpose.
- 6) Utility Services and Septic Systems – Existing wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed and replaced. Grantor may grant reasonable easements over and under the Property for septic or other utility systems serving the improvements permitted herein.

7) Roads – There may be one road of impervious surface constructed on the property. Grantor may build walking trails and dirt or gravel roads to be used for recreational or agricultural purposes.

8) Vegetative Buffer - There shall be no development or land clearing activities within 100 feet of a river, stream, creek bed, or wetland. Such areas shall remain a vegetative buffer for water quality purposes at all times.

#### **10. Maintenance and Improvement of Water Sources**

Grantor retains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with law.

## **11. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a duly qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changes or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

## **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluence only may be undertaken and only if in accordance with applicable law and only if a qualified professional environmental consultant certifies in writing that the application of said materials will not substantially diminish the conservation values and productivity of the Property.

## **14. Forest Management**

The property may be commercially timbered and replanted in accordance with either the conservation plan referenced in Section 12 above or a forest management plan prepared by a qualified professional forester.

## **15. Mining**

Exploration for, or development and extraction of, sand, dirt, top soil, minerals and hydrocarbons from the Property by any method are prohibited.

## **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the roads approved in the reserved area under Section 9, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee.

## **17. Hazardous Waste**

No waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on or to protect its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fee) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

(d) Insurance - Grantor and Grantee shall at all times carry adequate insurance covering their activities on the property.

## **19. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

## **20. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) money damages, including damages for loss of the conservation values protected by this Easement; and

(b) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement Act of 1991, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in writing at least thirty (30) days before any easement transfer. Transfer shall not occur before Grantor has given written consent, which will not be unreasonably withheld.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

## **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

## **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.



## **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantee shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

## **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

## **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **28. Severability**

Invalidation of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses, or such other addresses as the parties may designate by notice:

To Grantor:  
Cindy Bollinger  
Route 1  
Irmo, South Carolina, 29036

To Grantee:  
Manager, Richland County Conservation Commission  
P.O. Box 192  
Columbia, SC 29202

### **30. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except the lien for current ad valorem taxes and hereby promises to defend the same against any and all claims that may be made against it.

### **31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

### **32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise impair the conservation values of the Property is prohibited, except with the permission of Grantee.

### **33. Grantor's Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

### **34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

### **35. Acceptance**

As attested by the Seal of Richland County Council and the signature of its President affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Cindy Bollinger

\_\_\_\_\_  
Witness

Accepted:

Witness: \_\_\_\_\_

Richland County

\_\_\_\_\_

By \_\_\_\_\_

Chairman

\_\_\_\_\_  
Witness

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December 2008 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December 2008 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

## Richland County Council Request of Action

**Subject:** Conservation Easement - Bradley

### **A. Purpose**

County Council is requested by the Conservation Commission to accept a conservation easement on 289 acres of farmland as a donation in the Lower Richland Area of Richland County near old Bluff Road and the Congaree River in order to protect valuable natural resources, water quality, and preserve valuable open space, wildlife and agriculture.

### **B. Background / Discussion**

Ms. Mary Bradley, 5361 Lakeshore Drive, Columbia, SC 29206, has made a formal application to the Conservation Commission to help protect her valuable family farm legacy, natural resources, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for timber, wildlife, and scenic beauty. The property is a critical segment of Congaree River Watershed and near the Congaree National Park. The property is located in County Council District #10.

We salute their donation and conservation values.

### **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating 100% of the appraised easement value of which some may be captured by tax incentives. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer conservation partnership. The indirect benefits and cost to Richland County will be preserving farmland, improving water quality, and preserving wildlife and valuable green space.

### **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources, agriculture, and preserve green space. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow future development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

### **E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 289 acres owned by the Bradley Family.

**Recommended by:**

**Department:**

**Date:**

Maxey Love, Chair

Conservation Commission

9-22-2008

Jim Wilson, Program Manager

Richland County

9-22-2008

## F. Reviews

### Finance

Reviewed by: Daniel Driggers

Date: 10/21/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Approval based on recommendation of Conservation Commission.

### Legal

Reviewed by: Larry Smith

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

### Administration

Reviewed by: Tony McDonald

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:







parties agree to provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of traditional land use patterns, including, without limitation, those relating to wildlife habitat, agricultural practices, water quality and historic and architectural integrity existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantor intends to protect the property in order to promote the peaceful enjoyment of the natural and agricultural character, and

WHEREAS, Grantor further intends, as owners of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the property in perpetuity; and

WHEREAS, by Act of the Legislature of the State of South Carolina, as recorded in South Carolina Code Ann. (1976, as amended) Section 27-8-10, et. seq. (The South Carolina Easement Act of 1991), Grantee is authorized to hold conservation easements;

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect, in perpetuity, the Conservation Values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of South Carolina and in particular South Carolina Code Ann. (1976, as amended) Section 27-8-10, et. seq. (The South Carolina Easement Act of 1991), Grantor hereby voluntarily grants and conveys to Grantee a conservation easement, herein referred to as the Easement, in perpetuity over the Property of the nature and character and to the extent hereinafter set forth. This Easement being set forth in the recitals of this instrument which are incorporated by reference and said property being more particularly described as:

*All that certain piece parcel or tract of land, situate, lying and being in Richland County, South Carolina, **WILL NEED A PROPERTY DESCRIPTION***

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, terms, conditions and restrictions herein contained, Grantor, intending to be legally bound, agrees on behalf of itself and its successors and assigns as follows:

1. Purpose.

It is the purpose of this Easement to preserve and protect the natural, cultural, ecological, open space and scenic features of the land and to prevent any use of the Property that will significantly

impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those involving farming, recreation or education, as are consistent with the protection and preservation of the Conservation Values of the Property.

## 2. Rights of Grantee

To accomplish the purpose of this Easement the following rights are conveyed to Grantee:

- (a) To preserve and protect the Conservation Values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

## 3. Reserved Rights

Grantor reserves to itself, and to its successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Grantor shall perform management of the Property and nothing herein obligates in any way the expenditure of Grantee's funds for upkeep or general maintenance of the Property. Without limiting the generality of the foregoing, the following rights are reserved:

- (i) The right to maintain the property for wildlife habitat
- (ii) The right to maintain access roads and fences on the Property, provided that no such fence shall restrict, within reason, the use of the property as a habitat and safe haven for wildlife upon approval of grantee.
- (iii) The right to build trails and other passive, low impact recreational facilities.

## 4. Prohibited Activities

The Property will be used only for the single family agricultural, conservation, recreation and educational purposes expressly permitted hereunder. No commercial, multi-family, or industrial activities shall be permitted on the Property. In addition, the following specific restrictions upon use of the Property shall apply:

- (a) Subdivision Limitation

The property may be subdivided only to create three (3) additional lots of not more than five (5) acres each.

(b) Permitted Structures

The following structures and no others may be maintained and/or erected upon the Property.

- (i) The structures now existing on the Property and shown in the Baseline Documentation may be maintained and, if destroyed, restored to their condition as documented in the Baseline Documentation, subject to the provisions of this Section.
- (ii) Fences and boundary markers for the purposes of wildlife management, controlling unauthorized use and establishing boundaries.
- (ii) Walking paths.
- (iii) Ancillary building to further the use as a wildlife habitat, specifically excluding such buildings as may be permanently inhabited by humans.
- (iv) One (1) house on each of the three newly created lots as allowed in Section 4 (a) above, and one ancillary building such as a shed or garage, to accompany each permitted house, provided that such ancillary building does not exceed 1,000 square feet.

(c) Surface Alterations

No filling, dumping, excavation or other alteration shall be made to the surface of the Property other than those caused by the force of nature, excepting however, there are retained by the Grantor, the following rights:

- (i) The right to excavate in connection with the building, replacement, alteration or maintenance of:
  - a) Structures existing and permitted hereunder;
  - b) Footpaths, as appropriate or necessary for the protection and permitted uses of the Property;
  - c) Access ways to structures existing or permitted hereunder.

(d) Agriculture, Vegetation and Timber Cutting

The removal and forestation of standing timber, plants, shrubs, and other vegetation shall be permitted

- (i) to clear vegetation and forest cover as necessary in rebuilding, replacement, alteration and maintenance of: structures permitted hereunder; the water, sewage, electric, telephone, and other services related to the permitted uses of the Property; and footpaths

and access ways, as necessary or appropriate to the permitted uses and protection of the Property.

(ii) To manage forested acreage only to maintain and harvest a healthy stand of trees using Best Management Practices as promulgated by the South Carolina Forestry Commission.

(e) Miscellaneous

In no event shall any of the following be permitted:

- (i) Dumping or causing to be placed trash, waste, unsightly or offensive materials upon, above or over the Property.
- (ii) Erection of signs, billboards or other advertising markers, antennae or apparatus for telecommunications and radar, public utility installations, such as power plants, substations storage tanks, high tension electric power transmission lines, sewage treatment plants except only such structures as currently exist on the Property and are documented in the Baseline Documentation.
- (iii) Construction of underground or overhead telephone, electric, gas, television cable and other utility lines, pipes or wires other than those which may be necessary to service any residence or other structure on the Property permitted hereunder. Such utility lines may only be constructed upon consultation with the Grantee as to placement in order to protect the Conservation Values of the Property.
- (iv) Construction of a golf course or other active recreation facilities requiring disruption to the vegetative and natural state of the property

5. Public Access Allowed

Grantor shall retain exclusive authority to make determinations of public access for purposes of public safety and environmental sustainability of the property. Further, nothing in this agreement shall be construed to restrict Grantor's ability to allow the Property to be used by the public or made available for general public access. Grantor shall retain all financial responsibility for such decisions.

6. Notice of Intention to Undertake Certain Permitted Actions.

Grantor shall give Grantee 30 days prior written notice before undertaking any of the activities described in Section 4 requiring such notice. The purpose of requiring Grantor to notify Grantee prior to undertaking such permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of

this Easement. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. Grantor, if it disagrees with the finding of violation, may request that an independent arbitrator be allowed to mediate the resolution of the disagreement. Both parties must agree of the selection and use of the arbitrator, and the cost shall be shared equally among the parties.

If arbitration is unsuccessful, or if Grantor fails to cure the violation within thirty days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty day period, fail to begin curing such violation within the thirty day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, cultural or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury.

Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

#### 8. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the



accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with paragraph 17(b) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant (a) If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with paragraph 17(b) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

(a) If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with paragraph 17(b) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

(a) If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with paragraph 17(b) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

(a) If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with paragraph 17(b) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.



- a) If circumstances arise in the future which render the purpose of this easement impossible to accomplish, this easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with paragraph 9(b) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.
- b) This easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this paragraph 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the easement at the time of this grant to the value of the Property without deduction for the value of the easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this provision, the ratio of the value of the easement to the value of the Property unencumbered by the Easement shall remain constant.

#### 10. Assignment.

This easement is transferable, but Grantee may assign its right and obligations under this easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under South Carolina law. As a condition to such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

11. Subsequent Transfers.

Grantors agree to incorporate the terms of this easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least twenty days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

12. Enforcement in Case of Termination.

According to regulations of the United States Internal Revenue Code, in case Grantee ceases to exist as a valid non-profit organization under federal and state law, this easement may be enforced by a third party designated by the Grantee and Grantor.

13. Notices.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors;  
Rick Bradley

To Grantee:  
Richland County Conservation Commission  
P.O. Box 192  
Columbia, SC 29212

Or to such other address as either party from time to time shall designate by written notice to the other.

14. Recordation.

Grantee shall record this instrument in timely fashion in the official records of Richland County, South Carolina, and may re-record it at any time as may be required to preserve its rights in this easement.

15. General Provisions.

(i.) Controlling Law. The laws of the State of South Carolina shall govern the interpretation and performance of this Easement.

(ii.) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(iii.) Severability. If any provisions of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(iv.) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(v.) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(vi.) Successors. The covenants, terms, conditions, and restrictions of this easement shall be binding upon, and insure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(vii.) Termination of Rights and Obligations. A party's rights and obligations under this easement terminate upon transfer of the party's interest in the easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(viii.) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

**Land Holdings, LLC**

Witness \_\_\_\_\_

BY: \_\_\_\_\_

Witness \_\_\_\_\_

Witness \_\_\_\_\_

Witness \_\_\_\_\_

Richland County

BY: \_\_\_\_\_  
Chairman

STATE OF SOUTH CAROLINA)  
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within named Grantor sign, seal and as its act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Sworn to before me this 31st  
Day of December, 2008.

\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires: \_\_\_\_\_



# Richland County Council Request of Action

**Subject:** Conservation Easement - Clark

## **A. Purpose**

County council is requested by the Conservation Commission to accept a conservation easement on 18 acres as a donation in northwest Richland County near the Broad River and I-20 in order to protect a valuable floodplain, wetlands, natural resources, water quality, wildlife, and preserve valuable open space.

## **B. Background / Discussion**

Kenneth Clark, 1601 Old Tamah Road, Irmo, SC 29063, has made a formal application to the Conservation Commission to help protect his valuable natural resources, wetlands, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for timber, wildlife, and scenic beauty. The property is a critical segment of the Broad River floodplain and offers a trail corridor along Broad River. The Conservation Commission recommends fair compensation for trail access along Broad River for the Greenway Program in Richland County. The property faces development pressures on Broad River to be converted to high density sub-divisions. The property is located in County Council District #2 where extensive development has occurred. The Clark Family would like to contribute to a new conservation image for their community and protect the Broad River corridor. We salute their donation and conservation values.

## **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating a large percentage of the appraised easement value of which some may be captured by tax incentives. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space in a floodplain area of Broad River.

## **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space for all citizens. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

## **E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 18 acres owned by Kenneth Clark.

<b>Recommended by:</b>	<b>Department:</b>	<b>Date:</b>
<u>Maxey Love, Chair</u>	<u>Conservation Commission</u>	<u>9-22-2008</u>
<u>Jim Wilson, Program Manager</u>	<u>Richland County</u>	<u>9-22-2008</u>

**F. Reviews**

**Finance**

Reviewed by: Daniel Driggers Date: 10/21/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation: Approval based on recommendation of Conservation Commission.

**Legal**

Reviewed by: Larry Smith Date: 10/23/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation:

**Administration**

Reviewed by: Tony McDonald Date: 10/23/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation:





## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this \*\* day of December, 2008, by Clark Family Real Estate Trust having an address as 1601 Old Tamah Road, Irmo South Carolina, 29063, to Richland County, ("Grantee").

### **WITNESSETH:**

Grantor is the owner of certain real property in Richland County, South Carolina more particularly described below (the "Property").

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms are defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses that may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- The furtherance of the South Carolina Conservation Easement Act, §27-8-10 which authorizes the acquisition of conservation easements by non-profit organizations;

- The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.
- The protection of water quality deriving from the Property's location adjacent to the Broad River, which provides a source of drinking water and recreation for the Midlands of South Carolina.
- The protection of cultural resources identified as the River Alliance, a coalition of local governments, to ensure the continued enjoyment and preservation of the Broad River.
- The preservation of the Property as significant wildlife habitat and traditional hunting lands in this habitat rich area.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, hunting, or historic resources of the Property are collectively referred to herein as the "conservation values" of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Present Condition Report (the "Report") prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and §27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

#### NEED PROPERTY DESCRIPTION

### **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property as defined by the South Carolina Conservation Easement Act of 1991, of the nature and character described herein. Grantor will neither perform, nor knowingly allow another person to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

## **2. Statement of Purpose**

The Purpose of this Easement is to preserve the historically significant attributes of the Property and enable the Property to remain in traditional use by preserving and protecting its historic, scenic and rural nature and its other conservation and wildlife habitat features. No activity that significantly impairs the conservation values of the Property shall be permitted. To the extent that the preservation and protection of the natural, recreational or habitat values referenced in this Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

## **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and bequest the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

## **4. Limitation on Subdivision and Development**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. The Property may be subdivided to create one (1) new residential lot not to exceed one (1) acre, provided that this lot is certified to be outside the floodway as designated by Richland County. There shall be no multi-family, industrial, or commercial use of the Property.

## **5. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural, recreational, and hunting purposes or to permit others to use the Property for agricultural, recreational and hunting purposes, in accordance with applicable law.

## **6. Right to Privacy**

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

## **7. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products;

farm machinery repair; or firewood distribution, recreational and commercial hunting, fishing and trapping, so long as such uses are not inconsistent with the Purpose of this easement.

## **8. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

## **9. Construction of Buildings and Other Improvements**

Grantor may make improvements on the Property only as provided in this Section. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or other improvement of buildings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its records current.

- 1) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.
- 2) New Ancillary Structures & Improvements – New ancillary buildings and other structures and improvements to be used primarily for agricultural, equestrian or educational purposes may be built on the Property only with the permission of the Grantee.
- 3) Structures: There may be no multi family, commercial or industrial structures built on the Property. There may be one (1) single family dwelling built on the lot created under Section 4 above. No other residential construction is allowed.
- 5) Recreational Improvements – Grantor may construct blinds, stands and other facilities for viewing and/or hunting wildlife. Other passive recreational improvements may be built with the permission of the Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property or may the Property be used for for a use inconsistent with the Purpose.
- 6) Utility Services and Septic Systems – Existing wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed and replaced. Grantor may grant reasonable easements over and under the Property for septic or other utility systems serving the improvements permitted herein.

7) Roads – There may be one road of impervious surface constructed on the property. Grantor may build walking trails and dirt or gravel roads to be used for recreational or agricultural purposes.

8) Vegetative Buffer - There shall be no development or land clearing activities within 100 feet of a river, stream, creek bed, or wetland. Such areas shall remain a vegetative buffer for water quality purposes at all times. Minor clearing within the 100 buffer adjoining the Broad River may occur in order to improve the view of the River from the home site allowed in Section 9.3 above.

#### **10. Maintenance and Improvement of Water Sources**

Grantor retains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with law.

#### **11. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

#### **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a duly qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changes or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

#### **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluence may be undertaken if in accordance with applicable law and only if a qualified professional environmental consultant certifies in writing that the application of said materials will not substantially diminish the conservation values and productivity of the Property.

#### **14. Forest Management**

The property may be commercially timbered and replanted in accordance with either the conservation plan referenced in Section 12 above or a forest management plan prepared by a qualified professional forester.

### **15. Mining**

Exploration for, or development and extraction of, sand, dirt, top soil, minerals and hydrocarbons from the Property by any method are prohibited.

### **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the roads approved in the reserved area under Section 9, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee.

### **17. Hazardous Waste**

No waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on or to protect its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fee) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

(d) Insurance - Grantor and Grantee shall at all times carry adequate insurance covering their activities on the property.

## **19. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

## **20. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:



(a) money damages, including damages for loss of the conservation values protected by this Easement; and

(b) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement Act of 1991, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in writing at least thirty (30) days before any easement transfer. Transfer shall not occur before Grantor has given written consent, which will not be unreasonably withheld.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

## **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

## **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

## **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantee shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

## **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

## **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **28. Severability**

Invalidation of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses, or such other addresses as the parties may designate by notice:

To Grantor:  
Ken Clark  
1601 Old Tamah Road  
Irmo, South Carolina, 29063

To Grantee:  
Manager, Richland County Conservation Commission  
P.O. Box 192  
Columbia, SC 29202

**30. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except the lien for current ad valorem taxes and hereby promises to defend the same against any and all claims that may be made against it.

**31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

**32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise impair the conservation values of the Property is prohibited, except with the permission of Grantee.

**33. Grantor's Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

**34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**35. Acceptance**

As attested by the Seal of Richland County Council and the signature of its President affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Clark Family Real Estate Trust  
Kenneth Clark

\_\_\_\_\_  
Witness

Accepted:

Witness:  
\_\_\_\_\_

Richland County

By \_\_\_\_\_

Chairman

\_\_\_\_\_  
Witness

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December 2008 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December 2008 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

## Richland County Council Request of Action

**Subject:** Conservation Easement - Corboy

### **A. Purpose**

County council is requested by the Conservation Commission to accept a conservation easement on 40 acres as a donation in northeast Richland County off Clemson Road in order to protect valuable natural resources in the Crane Creek Watershed, water quality, and preserve valuable open space and scenic road vista.

### **B. Background / Discussion**

Mr. Steve Corboy, 15 Hunters Pond Drive, Columbia, SC 29229, has made a formal application to the Conservation Commission on behalf of SB Communities, LLC, to help protect this valuable property, natural resource corridors, wildlife, and maintain the rural integrity of the landscape. This land is currently forest land and flood plain. The property is a critical segment of connectivity to the Crane Creek Greenway Master Plan. The property is located in County Council District #7 where extensive development has occurred. SB Communities, LLC, would like to contribute to a new conservation image for a developing community. We salute their donation and conservation values.

### **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating 100% of the appraised easement value of which some may be captured by tax incentives. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space.

### **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners and developers.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

### **E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 40 acres owned by SB Communities, LLC.

**Recommended by:**

**Department:**

**Date:**

Maxey Love, Chair

Conservation Commission

9-22-2008

Jim Wilson, Program Manager

Richland County

9-22-2008

## F. Reviews

### Finance

Reviewed by: Daniel Driggers

Date: 10/21/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Approval based on recommendation of Conservation Commission.

### Legal

Reviewed by: Larry Smith

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

### Administration

Reviewed by: Tony McDonald

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:





## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this \_\_\_\_\_ day of December 2008, by SB Communities, LLC having an address at 15 Hunters Pond Drive Columbia, SC 29229-9011 (Grantor), to Richland County, ("Grantee").

### WITNESSETH:

Grantor is the owner of certain real property in Richland County, South Carolina more particularly described in Exhibit A.

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the " Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms is defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses that may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- ! The preservation of open space for the scenic enjoyment of the general public as visually accessed from Barton Creek, a major tributary of the Broad River.
- ! The preservation of vital and significant lands of ecological quality recognized as one of the three major drainage bottoms in Richland County.
- ! Preservation of water quality by providing an undeveloped buffer to Barton Creek, a major water course of the South Carolina Piedmont, which is recommended by the South Carolina Department of Health and Environmental Control.
- ! Preservation of primary recreational land in the South Carolina Midlands as evidenced by its inclusion of the Richland County Greenway Plan, adopted by the Richland County Council, recommending corridors for recreational trails and other opportunities preservation of property will provide the citizens of South Carolina.
- ! The furtherment of the South Carolina Conservation Easement Act of 1992, § 27-8-10 authorizes the acquisition of conservation easements by non-profit organizations.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, or water resources of the Property are collectively referred to herein as the "conservation values" of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Present Condition Report (the "Report") prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and section 27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

Richland County Tax ID #29-10 or more particularly described in Attachment A.

### **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by the South Carolina Conservation Easement Act of 1989 of the nature and character described herein. Grantor will neither perform, nor knowingly allow other to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

### **2. Statement of Purpose**

The primary purpose of this Easement is to enable the Property to remain in traditional use by preserving and protecting its rural nature and other conservation features. No activity, which significantly impairs the conservation purpose of the Property, shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

### **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and divide the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in

this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

#### **4. Rights to Use Property for Traditional Recreational Purposes**

Grantor retains the right to use the Property for traditional recreational and rural purposes, or to permit others to use the Property for these traditional purposes, in accordance with applicable law.

#### **5. Right of Public Access**

Grantor expressly authorizes the use of the property as a greenway to be constructed by Richland County or its designee in accordance with the County greenway plan, provided that Grantor must approve the placement, construction and management of such greenway prior to its development.

#### **6. Extinguishment of Right to Use for Customary Rural Enterprises**

By the grant of conservation easement, the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to non-industrial processing, packaging and marketing of farm products; livestock grazing, farm machinery repair; firewood distribution, private and commercial hunting and traditional uses are hereby extinguished.

#### **7. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder. Grantee expressly acknowledges and approves that the subject property may be transferred to the Killian Road Home Owner Association, Hester Woods Home Owner Association and Clemson Road Office Park Owners Association subject to the terms, conditions and restrictions of this easement.

#### **8. Procedure to Construct Building and Other Improvements**

Grantor may only undertake construction, reconstruction, or other improvements of the Property as provided herein. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or infrastructure or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its record current.

A) Gates and Fences – Existing gates and fences may be repaired and replaced, and new gates and fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife or management for the recreational and educational use of the property.

B) Existing Recreation, Educational or Ancillary Structures & Improvements – Existing recreational, educational or ancillary structures and improvements may be repaired, reasonably enlarged and replaced at their current locations, which are shown on the Baseline Report.

C) New Ancillary Structures & Improvements – Ancillary buildings or other structures and improvements to be used primarily for ancillary, recreational or educational purposes consistent with the conservation purposes of this easements may be built on the Property with the permission of the Grantee.

D) New Residential, Commercial or Industrial Structures – No new residential, commercial or industrial uses may be constructed on the Property.

E) Recreational Improvements – Recreational improvements may be may be built on the property in keeping with the conservation purposes of this easement, provided that under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property. The construction and extension of unpaved nature trails are expressly allowed and encouraged.

G) Utility Services and Septic Systems – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and Grantee may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved.

## **9. Maintenance and Improvement of Water Sources**

Grantor maintains the rights to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may not alter the natural flow of water over the Property, with the approval of the Richland County Department of Pubic Works. . The construction of ponds and reservoirs shall not be permitted without the permission of Grantee.

## **10. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **11. Subdivision**

The Property is currently comprised of the parcel shown on Attachment A. Subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into is prohibited

## **12. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes is not allowed.

## **13. Forest Management**

Given that restoration of the ecology integrity is a fundamental purpose of this easement, commercial timber harvesting is expressly prohibited. Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, and for construction of permitted improvements and fences on the Property only approved by the Grantee.

## **14. Mining**

Exploration for, or development and extraction of minerals and hydrocarbons from the Property by any method are prohibited.

## **15. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted if approved by grantee. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

## **16. Hazardous Waste**

No waste, or radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **17. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property, except that any construction or maintenance of a greenway on the subject property shall be the sole responsibility and at the expense of the Grantee including responsibility for any accidents, claims, losses suffered by Grantor as a result thereof,

(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee. Grantee shall not hold Grantor responsible for any and all cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Property unless such action violates the terms of this easement or otherwise damages the conservation values of the subject the property,

## **18. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

## **19. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, ex parte if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) Money damages, including damages for loss of the conservation values protected by this Easement; and

(b) Restoration of the Property to its condition existing prior to such violation

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred,

Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs. ( **STEVE/ED – COUNTY WIL NOT AGREE TO PAY ATTORNEY'S FEES**)

## **20. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement of 1985, provided the transferee expressly agrees to assume the responsibility imposed on Grantor by this Easement.

## **21. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

## **22. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

## **23. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 24 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

## **24. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 23 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of



the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantor shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

## **25. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

## **26. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **27. Severability**

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **28. Notices**

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses or such other addresses as the parties may designate by notice:

To Grantor:

SB Communities  
C/O Steve Corboy  
15 Hunters Pond Drive  
Columbia, SC 29229-9011

To Grantee:

Manager, Conservation Commission  
Richland County  
Box 192

Columbia, SC 29202

**29. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances and hereby promises to defend the same against all claims that may be made against it except for all covenants, conditions, easements and matters shown on plans or record at the time of execution.

**30. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

**31. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the conservation values of the Property is prohibited, except with the permission of Grantee.

**32. Grantor's Environmental Warranty**

Grantor warrants that at the time of execution it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

**33. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**34. Acceptance**

As attested by the Seal of Richland County Council and the signature of its Chairman affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Witness:

\_\_\_\_\_

Witness:

\_\_\_\_\_

Accepted:

\_\_\_\_\_

Stephen B. Corboy  
SB Communities

\_\_\_\_\_  
Richard N. Sendler  
SB Communities

By \_\_\_\_\_  
Richland

County Council

EXHIBIT A: LEGAL DESCRIPTION

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December, 2008, and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

County of Richland)  
State of South Carolina)

Acknowledgments

County of Richland)  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December, 2008, and acknowledged that all material statements of fact in fact in the foregoing Deed of Conservation Easement are true to the of his/her knowledge and belief, and that the execution of said Deed is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

## Richland County Council Request of Action

**Subject:** Conservation Easement - Koon

### **A. Purpose**

County council is requested by the Conservation Commission to accept a conservation easement on 40 acres as a donation in northwest Richland County near the Broad River off Lost Creek Road in order to protect valuable farmland, natural resources, water quality, wildlife, and preserve valuable open space.

### **B. Background / Discussion**

The Koon Family has made a formal application to the Conservation Commission to help protect his valuable family farm, natural resources, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for agriculture, timber, wildlife, and scenic beauty. The property is a critical segment of the Broad River floodplain. The property faces development pressures to be converted to high density sub-divisions. The property is located in County Council District #1 where extensive development has occurred. The Koon Family would like to contribute to a new conservation image for their community. We salute their donation and conservation values.

### **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating 100% of the appraised easement value of which some may be captured by tax incentives. We consider this agreement to be beneficial to both parties and meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space in a floodplain area of Broad River.

### **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space for all citizens. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

### **E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 40 acres owned by David Koon.

**Recommended by:**

**Department:**

**Date:**

Maxey Love, Chair

Conservation Commission

9-22-2008

Jim Wilson, Program Manager

Richland County

9-22-2008

## F. Reviews

### Finance

Reviewed by: Daniel Driggers

Date: 10/21/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Approval based on recommendation of Conservation Commission.

### Legal

Reviewed by: Larry Smith

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

### Administration

Reviewed by: Tony McDonald

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:





## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this \*\* day of December, 2008, by Calvin David Koon having an address as Route 1, Irmo South Carolina, 29036, to Richland County, ("Grantee").

### WITNESSETH:

Grantor is the owner of certain real property in Richland County, South Carolina more particularly described below (the "Property").

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms are defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses that may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- The furtherance of the South Carolina Conservation Easement Act, §27-8-10 which authorizes the acquisition of conservation easements by non-profit organizations;

- The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.
- The protection of water quality deriving from the Property's location near the Broad River, which provides a source of drinking water and recreation for the Midlands of South Carolina.
- The protection of cultural resources identified as the River Alliance, a coalition of local governments, to ensure the continued enjoyment and preservation of the Broad River.
- The preservation of the Property as significant wildlife habitat and traditional hunting lands in this habitat rich area.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, hunting, or historic resources of the Property are collectively referred to herein as the "conservation values" of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Present Condition Report (the "Report") prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and §27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

#### NEED PROPERTY DESCRIPTION

### **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property as defined by the South Carolina Conservation Easement Act of 1991, of the nature and character described herein. Grantor will neither perform, nor knowingly allow another person to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

## **2. Statement of Purpose**

The Purpose of this Easement is to preserve the historically significant attributes of the Property and enable the Property to remain in traditional use by preserving and protecting its historic, scenic and rural nature and its other conservation and wildlife habitat features. No activity that significantly impairs the conservation values of the Property shall be permitted. To the extent that the preservation and protection of the natural, recreational or habitat values referenced in this Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

## **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and bequest the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

## **4. Limitation on Subdivision and Development**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. Except as provided in Section 9 herein, subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels is prohibited. There shall be no multi-family, industrial, or commercial use of the Property.

## **5. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural, recreational, and hunting purposes or to permit others to use the Property for agricultural, recreational and hunting purposes, in accordance with applicable law.

## **6. Right to Privacy**

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

## **7. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products;

farm machinery repair; or firewood distribution, recreational and commercial hunting, fishing and trapping, so long as such uses are not inconsistent with the Purpose of this easement.

## **8. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

## **9. Subdivision and Construction of Buildings and Other Improvements**

Grantor may subdivide and make improvements on the Property only as provided in this Section. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or other improvement of buildings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its records current.

- 1) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.
- 2) New Ancillary Structures & Improvements – New ancillary buildings and other structures and improvements to be used primarily for agricultural, equestrian or educational purposes may be built on the Property only with the permission of the Grantee.
- 3) Grantor may not subdivide the Property.
- 4) There may be no residential, commercial or industrial structures built on the Property.
- 5) Recreational Improvements – Grantor may construct blinds, stands and other facilities for viewing and/or hunting wildlife. Other passive recreational improvements may be built with the permission of the Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property or may the Property be used for for a use inconsistent with the Purpose.
- 6) Utility Services and Septic Systems – Existing wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed and replaced. Grantor may grant reasonable easements over and under the Property for septic or other utility systems serving the improvements permitted herein.

7) Roads – There may be one road of impervious surface constructed on the property. Grantor may build walking trails and dirt or gravel roads to be used for recreational or agricultural purposes.

8) Vegetative Buffer - There shall be no development or land clearing activities within 100 feet of a river, stream, creek bed, or wetland. Such areas shall remain a vegetative buffer for water quality purposes at all times.

#### **10. Maintenance and Improvement of Water Sources**

Grantor retains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with law.

## **11. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a duly qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changes or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

## **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluence only may be undertaken and only if in accordance with applicable law and only if a qualified professional environmental consultant certifies in writing that the application of said materials will not substantially diminish the conservation values and productivity of the Property.

## **14. Forest Management**

The property may be commercially timbered and replanted in accordance with either the conservation plan referenced in Section 12 above or a forest management plan prepared by a qualified professional forester.

## **15. Mining**

Exploration for, or development and extraction of, sand, dirt, top soil, minerals and hydrocarbons from the Property by any method are prohibited.

## **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the roads approved in the reserved area under Section 9, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee.

## **17. Hazardous Waste**

No waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on or to protect its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fee) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

(d) Insurance - Grantor and Grantee shall at all times carry adequate insurance covering their activities on the property.

## **19. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

## **20. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:



(a) money damages, including damages for loss of the conservation values protected by this Easement; and

(b) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement Act of 1991, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in writing at least thirty (30) days before any easement transfer. Transfer shall not occur before Grantor has given written consent, which will not be unreasonably withheld.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

## **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

## **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

## **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantee shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

## **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

## **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **28. Severability**

Invalidation of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses, or such other addresses as the parties may designate by notice:

To Grantor:  
Calvin David Koon  
Route 1  
Irmo, South Carolina, 29036

To Grantee:  
Manager, Richland County Conservation Commission  
P.O. Box 192  
Columbia, SC 29202

**30. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except the lien for current ad valorem taxes and hereby promises to defend the same against any and all claims that may be made against it.

**31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

**32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise impair the conservation values of the Property is prohibited, except with the permission of Grantee.

**33. Grantor's Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

**34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**35. Acceptance**

As attested by the Seal of Richland County Council and the signature of its President affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Calvin David Koon

\_\_\_\_\_  
Witness

Accepted:

Witness: \_\_\_\_\_

Richland County

\_\_\_\_\_

By \_\_\_\_\_

Chairman

\_\_\_\_\_  
Witness

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December 2008 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December 2008 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

## Richland County Council Request of Action

**Subject:** Conservation Easement - Monroe

### **A. Purpose**

County council is requested by the Conservation Commission to accept a conservation easement on 17.5 acres as a donation in northeast Richland County off Two Notch Road next to an existing conservation area in order to protect valuable natural resources, water quality, and preserve valuable open space and scenic road vista.

### **B. Background / Discussion**

Mr. G. P. Monroe, 10651 Two Notch Road, Elgin, SC 29045, has made a formal application to the Conservation Commission to help protect his valuable family farm, natural resources, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for agriculture and scenic beauty along Two Notch Road. The property is a critical segment of connectivity to an existing easement. The property faces huge development pressures to be converted to high density sub-divisions. The property is located in County Council District #9 where extensive development has occurred. The Monroe Family would like to contribute again to a new conservation image for their community. We salute their donation and conservation values.

### **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating 100% of the appraised easement value of which some may be captured by tax incentives. We consider this agreement to be beneficial to both parties and meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space.

### **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space for all citizens. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

### **E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 17.5 acres owned by G.P. Monroe.

**Recommended by:**

**Department:**

**Date:**

Maxey Love, Chair

Conservation Commission

9-22-2008

Jim Wilson, Program Manager

Richland County

9-22-2008

## F. Reviews

### Finance

Reviewed by: Daniel Driggers

Date: 10/21/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Approval based on recommendation of Conservation Commission.

### Legal

Reviewed by: Larry Smith

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

### Administration

Reviewed by: Tony McDonald

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:





## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this \*\* day of December, 2008, by G.P. Monroe and Virginia Monroe having an address 10651 Two Notch Rd. Elgin, SC 29045, to Richland County, ("Grantee").

### WITNESSETH:

Grantor is the owner of certain real property in Richland County, South Carolina more particularly described on Attachment A.

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms is defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses which may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- ! The preservation of open space for the scenic enjoyment of the general public.
- ! The furtherment of the South Carolina Conservation Easement Act, 27-8-10 et seq authorizes the acquisition of conservation easements by local governments.
- ! The fulfillment of the goals of Richland County Town and Country Comprehensive Plan, as adopted in 2003.
- ! The fulfillment of the goals of The Richland County Conservation Commission which has identified lands of importance to the community's agricultural heritage as a pressing need.
- ! The contribution to the Two Notch Conservation Area identified as a policy priority by the Richland County Conservation area as indicated by the enactment of several conservation projects by the Commission

- ! The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.
- ! The preservation of water quality related to the provision of buffering from development several ponds on the property.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, or historic resources of the Property are collectively referred to herein as the “conservation values” of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Baseline Report prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement. Copies of the Baseline Report on file at the offices of the Grantee

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and section 27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

*Richland County Tax Map Number or more particularly described in Attachment A*

## **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by the South Carolina Conservation Easement Act of the nature and character described herein. Grantor will neither perform, nor knowingly allow other to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

## **2. Statement of Purpose**

The primary purpose of this Easement is to enable the Property to remain in traditional use by preserving and protecting its rural nature and other conservation features. No activity which significantly impairs the conservation purpose of the Property shall be permitted. To the extent

that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

### **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and divide the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

### **4. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law.

### **5. Right to Privacy**

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

### **6. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; sawmills; or firewood distribution.

### **7. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

### **8. Procedure to Construct Building and Other Improvements**

Except as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvement of the Property only as provided below. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or other improvement of single-family dwellings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its record current.

A) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.

B) Existing Agricultural, Recreation or Ancillary Structures & Improvements – Existing agricultural, recreational or ancillary structures and improvements may be repaired, reasonably enlarged and replaced at their current locations, which are shown in the Baseline Report.

C) New Ancillary Structures & Improvements – New ancillary building and other structures and improvements to be used primarily for ancillary or agricultural purposes may be built on the Property within the “Developed Area” identified on the Baseline Report. New buildings, structures or improvements proposed for locations outside the “Developed Area” may be built only with the permission of the Grantee.

D) Existing Single-Family Residential Dwellings – All existing single- family residential dwellings may be repaired, reasonably enlarged and replaced at their current locations, which are shown on the Baseline Report.

E) New Single-Family Residential Housing – There may be one (1) new residential dwellings constructed on the Property, provided that no more than one-half acre of land shall be disturbed for this new construction.

F) Recreational Improvements – Recreational improvements may be built within the area identified as “Developed Area” on the Baseline Report. Any new recreational improvements proposed for locations outside the area identified as “Developed area” may be built only with the permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property.

G) Utility Services and Septic Systems – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and Grantee may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved.

## **9. Maintenance and Improvement of Water Sources**

Grantor maintains the rights to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage or agricultural soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and are carried out in accordance with law. The construction of ponds and reservoirs shall be permitted only with the permission of Grantee.

## **10. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **11. Subdivision**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. Subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels may only be accomplished to create one (1) additional lot, not to exceed two (2) acres, to accomplish the construction of one new residential structure as allowed in section 8(e) above. Upon this subdivision, all provisions of this easement shall apply fully to each newly created lot. Further subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels may only be accomplished to create the additional one lot without the permission of Grantee is prohibited

## **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changed or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

## **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes is prohibited. The use of septic tanks for homes on the three permitted lots described in section 11 is specifically allowable.

## **14. Forest Management**

Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, for firewood for domestic use in dwelling on the Property, for commercial harvesting and for construction of permitted improvements and fences on the Property. The cutting, removal or harvesting of trees must be in accordance with either the conservation plan referenced in Paragraph 12 above or a forest management plan prepared by a qualified professional forester.

## **15. Mining**

Exploration for, or development and extraction of, minerals and hydrocarbons from the Property by any method are prohibited.

## **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the approved roads and barnyard areas indicated on the Baseline Report, which specifically includes right of ways existing at the time of execution for this document serving home sites on the property, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee.

## **17. Hazardous Waste**

No waste, or radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all lose, cost, claim, liability, or expense (including reasonable attorneys' fee) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

## **19. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.



## **20. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) Money damages, including damages for loss of the conservation values protected by this Easement; and

(b) Restoration of the Property to its condition existing prior to such violation

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement, provided the transferee expressly agrees to assume the responsibility imposed on Grantor by this Easement.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

### **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

### **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

### **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantor shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

### **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

### **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **28. Severability**

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses or such other addresses as the parties may designate by notice:

To Grantor:

G. P. Monroe  
10651 Two Notch Rd.  
Elgin, SC 29045

To Grantee:

Director  
Richland County Conservation Commission  
P.O. Box 918  
Columbia, SC 29201

## **30. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except and hereby promises to defend the same against all claims that any be made against it.

## **31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

## **32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise or impair the conservation values of the Property is prohibited, except with the permission of Grantee.

**33. Other Applicable Laws and Regulations**

Nothing in this easement, or its acceptance by Grantee, shall impair or imply the failure of, the application of all applicable land use, environmental, public health or other relative regulations, laws or acts duly enacted by Grantee or other governmental bodies.

**34. Grantor’s Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney’s fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

**34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**35. Acceptance**

As approved by the Richland County Council and the signature of its Chairman affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Witness:

\_\_\_\_\_

\_\_\_\_\_  
G.P. Monroe

\_\_\_\_\_

\_\_\_\_\_  
Virginia Monroe

Accepted:

Witness:

\_\_\_\_\_  
Council Richland County

\_\_\_\_\_

By \_\_\_\_\_

ATTACHMENT A

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

County of Richland)  
State of South Carolina)

Acknowledgments

County of Richland)  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_,  
2008, and acknowledged that all material statements of fact in fact in the foregoing Deed of  
Conservation Easement are true to the of his/her knowledge and belief, and that the execution of  
said Deed is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Notary Public  
My commission expires:

(SEAL)

## Richland County Council Request of Action

**Subject:** Conservation Easement - Reddick

### **A. Purpose**

County council is requested by the Conservation Commission to accept a conservation easement on 14 acres as a donation in northwest Richland County near the Broad River off Wash Lever Road in order to protect valuable natural resources, water quality, and preserve valuable open space.

### **B. Background / Discussion**

Mr. Phillip Reddick, 141 Dr. Pinner Road, P.O. Box 35, Peak, SC 29075, has made a formal application to the Conservation Commission to help protect his valuable family farm, natural resources, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for timber, wildlife, and scenic beauty. The property is a critical segment of the Broad River drainage system. The property faces huge development pressures to be converted to high density sub-divisions. The property is located in County Council District #1 where extensive development has occurred. The Reddick Family would like to contribute to a new conservation image for their community. We salute their donation and conservation values.

### **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating 100% of the appraised easement value of which some may be captured by tax incentives. We consider this agreement to be beneficial to both parties and meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space.

### **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space for all citizens. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

### **E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 14 acres owned by Phillip Reddick.



<b>Recommended by:</b>	<b>Department:</b>	<b>Date:</b>
<u>Maxey Love, Chair</u>	<u>Conservation Commission</u>	<u>9-22-2008</u>
<u>Jim Wilson, Program Manager</u>	<u>Richland County</u>	<u>9-22-2008</u>

## **F. Reviews**

### **Finance**

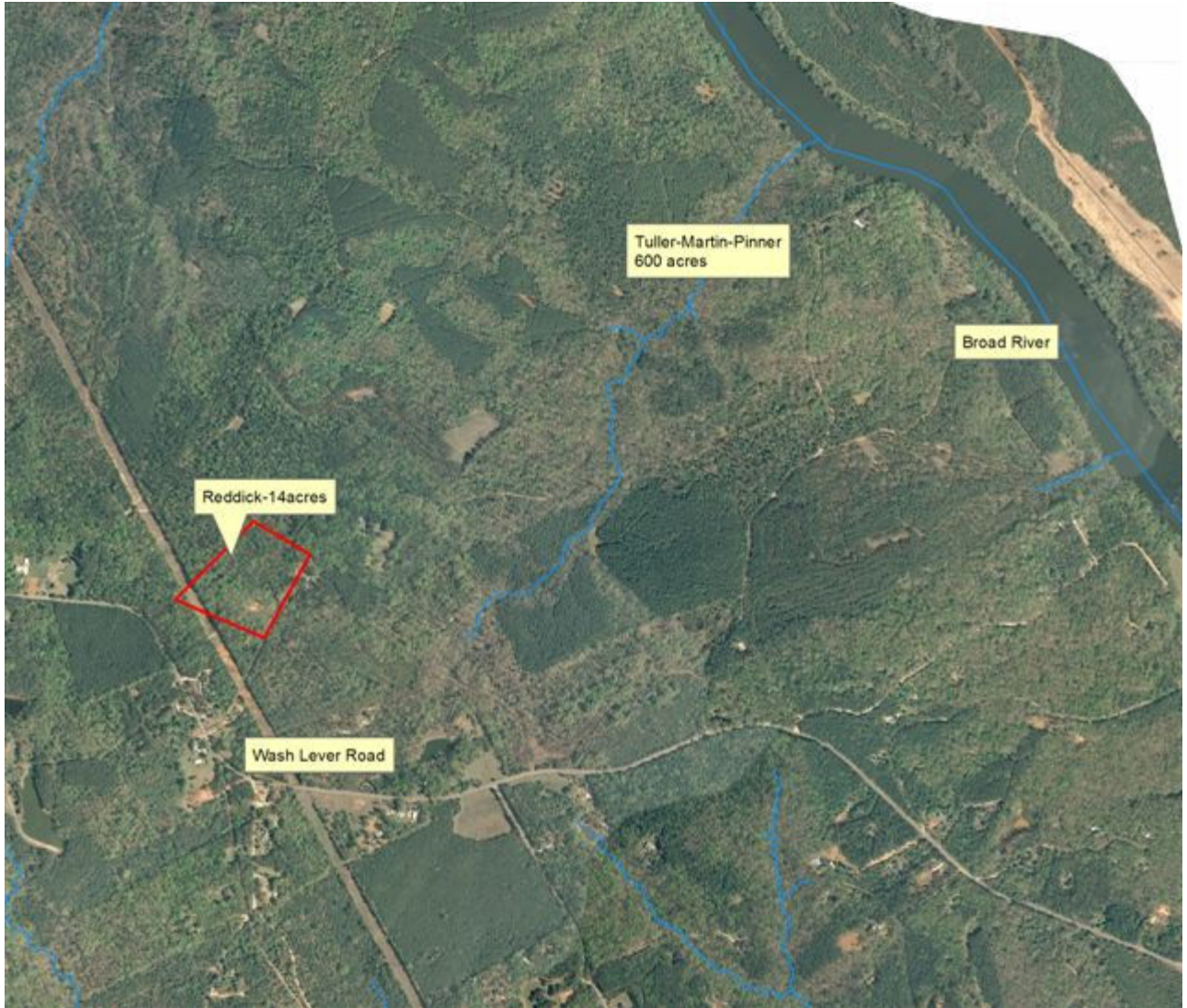
Reviewed by: Daniel Driggers Date: 10/21/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation: Approval based on recommendation of Conservation Commission.

### **Legal**

Reviewed by: Larry Smith Date: 10/23/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation:

### **Administration**

Reviewed by: Tony McDonald Date: 10/23/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation:



## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this \*\* day of December, 2008, by Philip Reddick, 29063 having an address as 141 Dr. Pinner Road, Irmo, SC, to Richland County, ("Grantee").

### **WITNESSETH:**

Grantor is the owner of certain real property in Richland County, South Carolina more particularly described below (the "Property").

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms are defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses that may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- The furtherance of the South Carolina Conservation Easement Act, §27-8-10 which authorizes the acquisition of conservation easements by non-profit organizations;

- The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.
- The protection of water quality deriving from the Property's location near the Broad River, which provides a source of drinking water and recreation for the Midlands of South Carolina.
- The protection of cultural resources identified as the River Alliance, a coalition of local governments, to ensure the continued enjoyment and preservation of the Broad River.
- The preservation of the Property as significant wildlife habitat and traditional hunting lands in this habitat rich area.
- The preservation of property identified as important for conservation by the Richland County Conservation Commission, an arm of Richland County government charged with promoting conservation of significant county lands and who has conserved similar lands in the proximity of this parcel.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, hunting, or historic resources of the Property are collectively referred to herein as the "conservation values" of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Present Condition Report (the "Report") prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and §27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

#### NEED PROPERTY DESCRIPTION

### **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property as defined by the South Carolina Conservation Easement Act of 1991, of the nature and character described herein. Grantor will neither perform, nor knowingly allow another person to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

## **2. Statement of Purpose**

The Purpose of this Easement is to preserve the historically significant attributes of the Property and enable the Property to remain in traditional use by preserving and protecting its historic, scenic and rural nature and its other conservation and wildlife habitat features. No activity that significantly impairs the conservation values of the Property shall be permitted. To the extent that the preservation and protection of the natural, recreational or habitat values referenced in this Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

### **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and bequest the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

### **4. Limitation on Subdivision and Development**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. Except as provided in Section 9 herein, subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels is prohibited. There shall be no multi-family, industrial, or commercial use of the Property.

### **5. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural, recreational, and hunting purposes or to permit others to use the Property for agricultural, recreational and hunting purposes, in accordance with applicable law.

### **6. Right to Privacy**

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

### **7. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; or firewood distribution, recreational and commercial hunting, fishing and trapping, so long as such uses are not inconsistent with the Purpose of this easement.

### **8. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the

Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

## **9. Subdivision and Construction of Buildings and Other Improvements**

Grantor may subdivide and make improvements on the Property only as provided in this Section. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or other improvement of buildings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its records current.

- 1) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.
- 2) New Ancillary Structures & Improvements – New ancillary buildings and other structures and improvements to be used primarily for agricultural, equestrian or educational purposes may be built on the Property only with the permission of the Grantee.
- 3) Subdivision - Grantor may not subdivide the Property.
- 4) Structures - There may be no, commercial or industrial structures built on the Property. *There may be one* residential dwelling constructed on the property, provided that not more than one acre may be cleared for such use.
- 5) Recreational Improvements – Grantor may construct blinds, stands and other facilities for viewing and/or hunting wildlife. Other passive recreational improvements may be built with the permission of the Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property or may the Property be used for for a use inconsistent with the Purpose.
- 6) Utility Services and Septic Systems – Existing wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed and replaced. Grantor may grant reasonable easements over and under the Property for septic or other utility systems serving the improvements permitted herein.
- 7) Roads – There may be one road of impervious surface constructed on the property. Grantor may build walking trails and dirt or gravel roads to be used for recreational or agricultural purposes.
- 8) Vegetative Buffer - There shall be no development or land clearing activities within 100 feet of a river, stream, creek bed, or wetland. Such areas shall remain a vegetative buffer for water quality purposes at all times.

## **10. Maintenance and Improvement of Water Sources**

Grantor retains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with law.

## **11. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a duly qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changes or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

## **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluence only may be undertaken and only if in accordance with applicable law and only if a qualified professional environmental consultant certifies in writing that the application of said materials will not substantially diminish the conservation values and productivity of the Property.

## **14. Forest Management**

The property may be commercially timbered and replanted in accordance with either the conservation plan referenced in Section 12 above or a forest management plan prepared by a qualified professional forester.

## **15. Mining**

Exploration for, or development and extraction of, sand, dirt, top soil, minerals and hydrocarbons from the Property by any method are prohibited.



## **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the roads approved in the reserved area under Section 9, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee.

## **17. Hazardous Waste**

No waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on or to protect its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fee) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

(d) Insurance - Grantor and Grantee shall at all times carry adequate insurance covering their activities on the property.

## **19. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

## **20. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

- (a) money damages, including damages for loss of the conservation values protected by this Easement; and
- (b) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement Act of 1991, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in writing at least thirty (30) days before any easement transfer. Transfer shall not occur before Grantor has given written consent, which will not be unreasonably withheld.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

### **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

### **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

### **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantee shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

### **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

### **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **28. Severability**

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses, or such other addresses as the parties may designate by notice:

To Grantor:  
Philip Reddick,  
141 Dr. Pinner Road  
Irmo, SC 29063

To Grantee:  
Manager, Richland County Conservation Commission  
P.O. Box 192  
Columbia, SC 29202

## **30. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except the lien for current ad valorem taxes and hereby promises to defend the same against any and all claims that may be made against it.

## **31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

## **32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise impair the conservation values of the Property is prohibited, except with the permission of Grantee.

## **33. Grantor's Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any

and all loss, cost, claim, liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

**34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**35. Acceptance**

As attested by the Seal of Richland County Council and the signature of its President affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Philip Reddick,

\_\_\_\_\_  
Witness

Accepted:

Witness:

Richland County

\_\_\_\_\_

By \_\_\_\_\_

Chairman

\_\_\_\_\_  
Witness

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December 2008 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of December 2008 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

## Richland County Council Request of Action

**Subject:** Conservation Easement - Roseberry

### **A. Purpose**

County council is requested by the Conservation Commission to accept a conservation easement on 47 acres as a donation in northeast Richland County off Two Notch Road in order to protect valuable natural resources, water quality, and preserve valuable open space and scenic road vista.

The property is at the headwaters of the Gills Creek Watershed.

### **B. Background / Discussion**

Mr. Royal Roseberry, 190 Roseberry Road, Columbia, SC, has made a formal application to the Conservation Commission to help protect his valuable family property, natural resources, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for timber, wildlife, and scenic green space off of Two Notch Road. The property is a critical segment of the Gills Creek Watershed. The property faces huge development pressures to be converted to high density sub-divisions. The property is located in County Council District #9 where extensive development has occurred. Mr. Roseberry would like to contribute to a new conservation image for their community. We salute his donation and conservation values.

### **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating 100% of the appraised easement value of which some may be captured by tax incentives as a part of his will and estate. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space.

### **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space for all citizens. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever. Development will also further the impairments to Gills Creek Watershed and reduce water quality.



**E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 47 acres owned by Royal Roseberry.

<b>Recommended by:</b>	<b>Department:</b>	<b>Date:</b>
<u>Maxey Love, Chair</u>	<u>Conservation Commission</u>	<u>9-22-2008</u>
<u>Jim Wilson, Program Manager</u>	<u>Richland County</u>	<u>9-22-2008</u>

**F. Reviews**

**Finance**

Reviewed by: Daniel Driggers Date: 10/21/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation: Approval based on recommendation of Conservation Commission.

**Legal**

Reviewed by: Larry Smith Date: 10/23/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation:

**Administration**

Reviewed by: Tony McDonald Date: 10/23/08  
✓ Recommend Council approval  Recommend Council denial  
Comments regarding recommendation:



## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted by Royal Roseberry, having an address at 190 Roseberry Road Columbia, SC to Richland County, ("Grantee") to take effect at the time of his death as signified in his will on file in the offices of William Elder.

### WITNESSETH:

Grantor, to include his estate and heirs and assigns, is the owner of certain real property in Richland County, South Carolina more particularly described on Attachment A.

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms is defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses which may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- The preservation of open space for the scenic enjoyment of the general public.
- The furtherment of the South Carolina Conservation Easement Act, 27-8-10 et seq authorizes the acquisition of conservation easements by local governments;
- The fulfillment of the goals of Richland County Town and Country Comprehensive Plan, as adopted in 2003.
- The fulfillment of the goals of The Richland County Conservation Commission which has identified lands of importance to the community's agricultural heritage as a pressing need.
- The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.
- The preservation of an historic structure built in 1948 and related outbuildings that are significant reminders of the vernacular architecture of Richland County.
- The preservation of land that serves as a buffer to the headwaters of Gill's Creek, which has been identified as a water body of County wide interest by the Richland County Council.

- The fulfillment of the Richland County Greenway plan which has promoted the immediate location of the property as a potential hub in the County’s hub and spoke greenway plan.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, or historic resources of the Property are collectively referred to herein as the “conservation values” of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Baseline Report prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement. Copies of the Baseline Report on file at the offices of the Grantee

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and section 27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described in Attachment A.

## **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by the South Carolina Conservation Easement Act of the nature and character described herein. Grantor will neither perform, nor knowingly allow other to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

## **2. Statement of Purpose**

The primary purpose of this Easement is to enable the Property to remain in traditional use by preserving and protecting its rural nature and other conservation features. No activity which significantly impairs the conservation purpose of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

### **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and divide the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

### **4. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law.

### **5. Right to Privacy**

Grantor intends to allow for the public to make use of the property for educational or recreational pursuits. Grantor retains the right to exclude any member of the public from the Property for safety or security reasons.

### **6. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; sawmills; or firewood distribution.

### **7. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

### **8. Procedure to Construct Building and Other Improvements**

Except as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvement of the Property only as provided below. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or other improvement of single-family dwellings or

recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its record current.

A) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.

B) Existing Agricultural, Recreation or Ancillary Structures & Improvements – Existing agricultural, recreational or ancillary structures and improvements may be repaired, reasonably enlarged and replaced at their current locations, which are shown in the Baseline Report.

C) New Ancillary Structures & Improvements – New ancillary building and other structures and improvements to be used primarily for educational or recreational purposes may be built on the Property within the “Developed Area” identified on the Baseline Report. New buildings, structures or improvements proposed for locations outside the “Developed Area” may be built only with the permission of the Grantee.

D) Existing Single-Family Residential Dwelling – The existing “historic homestead” residential dwelling may be repaired, reasonably enlarged and replaced at its current location, which is shown on the Baseline Report.

E) New Single-Family Residential Housing – There may be no new residential dwellings constructed on the Property, except that a replacement homestead as allowed in Section 8 D. above may be constructed upon the footprint of the “existing homestead if that home is deconstructed by natural or other causes, and provided that the replacement homestead may not exceed 5,000 square feet.

F) Recreational and Educational Improvements – Recreational or educational improvements may be built on the property, to include but not limited to trails, interpretive features and wildlife facilities provided that, at the discretion of the Grantee, the conservation values of the property are not damaged.. Any new recreational improvements proposed for locations outside the area identified as “Developed area” may be built only with the permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property.

G) Utility Services and Septic Systems – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and Grantee may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved.

H) Right of Ingress and Egress – Grantor shall have at all times the right to access the property, to include but not limited to the historic house and developed area via non-paved surfaces and a right of way not to exceed twenty (20) feet in width shall be granted to the grantor, his successors and assigns if such property is sold, condemned or otherwise transferred.

## **9. Maintenance and Improvement of Water Sources**

The lake existing on the property at the time of execution of this easement and indicated on the existing baseline report shall not be drained, filled, altered or otherwise destroyed. Grantor maintains the rights to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage or agricultural soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with law. The construction of ponds and reservoirs shall be permitted only with the permission of Grantee.

## **10. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **11. Subdivision and proceeds**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. Subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels may only be accomplished to create one new lot to include the historic homestead indicated in section 8 D as approved by the Grantee. Such new lot may not exceed five acres and if created, any proceeds from its sale or other transfer shall be for the benefit of the St. David's Episcopal Church, having an address at 605 Polo Road in Columbia, South Carolina.

## **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changed or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

### **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes is prohibited.

### **14. Forest Management**

Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, for firewood for domestic use in dwelling on the Property, for commercial harvesting and for construction of permitted improvements and fences on the Property. The cutting, removal or harvesting of trees must be in accordance with either the conservation plan referenced in Paragraph 12 above or a forest management plan prepared by a qualified professional forester.

### **15. Mining**

Exploration for, or development and extraction of, minerals and hydrocarbons from the Property by any method are prohibited.

### **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the approved roads and barnyard areas indicated on the Baseline Report, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee

### **17. Hazardous Waste**

No waste, or radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

### **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.



(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys’ fee) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

### **19. Extinguishment of Development Rights, No Merger of title and Third Party Enforcement**

**Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.**

**If the Grantee should acquire fee title interest in the property merger of title shall not occur and Grantee shall select a third party public agency or private nonprofit organization that is a “qualified organization” under Section 170(h) of the Code and under the S.C. Conservation Easement Act to enforce the provisions of this easement.**

### **20. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation

Notwithstanding the foregoing, where Grantee in Grantee’s sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) Money damages, including damages for loss of the conservation values protected by this Easement; and

(b) Restoration of the Property to its condition existing prior to such violation

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys’ fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a

later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a “qualified organization” under Section 170(h) of the Code and under the S.C. Conservation Easement Act, provided the transferee expressly agrees to assume the responsibility imposed on Grantor by this Easement.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

## **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee’s easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

## **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

## **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the “Proportionate Share”) of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantor shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

## **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

## **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **28. Severability**

Invalidation of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses or such other addresses as the parties may designate by notice:

To Grantor:

Royal Roseberry  
190 Roseberry Road  
Columbia, SC 29223

To Grantee:

Director  
Richland County Conservation Commission  
P.O. Box 918  
Columbia, SC 29201

## **30. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except and hereby promises to defend the same against all claims that any be made against it.

### **31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

### **32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise or impair the conservation values of the Property is prohibited, except with the permission of Grantee.

### **33. Other Applicable Laws and Regulations**

Nothing in this easement, or its acceptance by Grantee, shall impair or imply the failure of, the application of all applicable land use, environmental, public health or other relative regulations, laws or acts duly enacted by Grantee or other governmental bodies.

### **34. Grantor's Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

### **34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

### **35. Acceptance**

As approved by the Richland County Council and the signature of its Chairman affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Witness:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Royal Roseberry

Accepted:

Witness:

Richland County

Council

\_\_\_\_\_

By \_\_\_\_\_

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

County of Richland)  
State of South Carolina)

Acknowledgments

County of Richland)  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_,  
2008, and acknowledged that all material statements of fact in fact in the foregoing Deed of  
Conservation Easement are true to the of his/her knowledge and belief, and that the execution of  
said Deed is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Notary Public  
My commission expires:

(SEAL)

## **Richland County Council Request of Action**

Subject: CDC Partnerships with Existing Entities

### **A. Purpose**

County Council is requested to approve the Richland County Administration and Community Development Department to work with existing CDCs such as the City (Columbia Housing Development Corporation (CHDC), TN Development, Eau Claire Development Corporation (ECDC) and Columbia Development Corporation (CDC)) and others (e.g., Benedict-Allen CDC, Community Assistance Provider, etc) as a CDC source to benefit Richland County.

### **B. Background / Discussion**

The need for this request evolved due to County Council's direction to fund a CDC for Richland County to provide residential and economic opportunities. The request was made and approved in the D&S meeting dated June 24, 2008. At the September 23, 2008 D&S meeting, County Administrator Milton Pope noted that Administration and Community Development will be seeking additional information in working with existing non-profits that hold a CDC title and determination along with all the governing rules and responsibilities. Council asked for follow-up at the October 28<sup>th</sup> meeting. Administration along with Community Development will continue talks with local CDC's towards this end. Both Administration and Community Development are currently committed to working with CDC's and will provide financial support, with County and federal funds as deemed appropriate.

The Community Development Department currently works with CDC's such as Carolina CDC, Community Assistance Provider (CAP), and Benedict-Allen CDC. These partners provide work as CDC or CHDO's (Community Housing Development Organizations) to construct and/or renovate housing. Some of the current revitalization areas include Arthurtown and Ridgewood. The City of Columbia's Community Development Department and the Richland County Community Development Department are also looking at fostering a heightened partnership that could include CDC's from the City level. The City's Community Development Director provides management for all the City CDC's, including the two focusing on economic impact, ECDC and CDC.

Both County and City will continue to explore together properties, economic and residential, that will benefit all citizens. There are several areas where the City and County are contiguous and this would be a good starting point to address housing, slum and blighted conditions and other needs of our communities.

### **C. Financial Impact**

The financial costs and time savings to this approach is significant. The total costs and time savings to work with existing CDC's is greatly reduced by not having to expend County funding for CDC creation and upstart. The Community Development Department funds

would be available upon a HUD-approved amended budget to supply federal funds up to \$100,000 towards the programmatic costs for this effort.

**D. Alternatives**

Option #1: To approve the request for County Administration and Community Development to move forward with the partnership of County/City/local CDCs, that can address residential and economic impact projects.

Option #2 The other alternative is to not move forward with the partnership of a County/City/local CDCs, that can address residential and economic impact projects.

Additional impacts of Option #1:

- Already developed and fully operational CDC’s that have a shared network of developers, contractors, lenders, etc.
- Currently formed partnerships between various local CDC’s and County
- No start up costs to the County

**E. Recommendation**

It is recommended by County Administration and Community Development that Council approve the request to move forward with the request for County Administration and Community Development to form a partnership of County/City/local non-profit CDCs that can be used to address residential and economic impact projects.

**Recommended by:** J. Milton Pope and Valeria D. Jackson  
**Departments:** Administration and Community Development  
**Date:** October 28, 2008

**F. Reviews**

**Finance**

Reviewed by: Daniel Driggers Date: 10/21/08  
 Recommend Council approval  Recommend Council denial  
Comments regarding recommendation: No recommendation

**Legal**

Reviewed by: Larry Smith Date: 10/23/08  
 Recommend Council approval  Recommend Council denial  
Comments regarding recommendation: Council discretion

**Administration**

Reviewed by: Tony McDonald Date: 10/23/08  
 Recommend Council approval  Recommend Council denial  
Comments regarding recommendation:



## Richland County Council Request of Action

**Subject:** Neighborhood Stabilization Program (NSP) Funds Authorization

### **A. Purpose**

County Council is requested to adopt the incorporation of the Neighborhood Stabilization Program (NSP) Fund program into the Richland County Community Development Block Grant (CDBG) Program as per the Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA). The County will receive \$2.22 million as a direct allocation.

### **B. Background / Discussion**

HUD's new Neighborhood Stabilization Program (NSP) will provide emergency assistance to state and local governments to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within their communities. Congress allocated a total of \$3.92 billion to all states and particularly hard-hit areas trying to respond to the effects of high foreclosures. The Neighborhood Stabilization Program (NSP) provides grants to every state and certain local communities to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline of house values of neighboring homes.

Each state received a minimum of \$19.6 million. The Community Development Department was granted the allocation by the US Department of HUD as an entitlement grant. South Carolina received a total of \$49 million. Richland County and Greenville County are the only two municipalities in SC to receive funds. Richland County has received \$2.22 million. The need was based upon the number and percent of home foreclosures, homes financed by a sub prime mortgage loan, and homes in default or delinquency for the county. All activities funded by NSP must benefit low- and moderate-income persons whose income does not exceed 120% of area median income. While the process is still ongoing, the SC State Housing and Finance Authority is now determining if Richland County will be eligible for State NSP funding.

All activities funded by NSP have a mandatory requirement to benefit low, moderate and middle income persons (LMMI) whose income does not exceed 120% of area median income. For example, for this metropolitan area, 120% for one person is \$50,900, two persons is \$58,200, and family of four is \$72,700, etc. However, no less than 25% of the funds must be made available to housing activities that do not exceed 50% of the area median income. This applies to both County and State NSP funds. Richland County must target funds to areas of greatest need within the County and can expend the funds throughout the entire county, if it deems appropriate.

The NSP funds can be used for the following eligible areas:

- Establish financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties;
- Purchase and rehabilitate homes and residential properties abandoned or foreclosed;
- Establish land banks for foreclosed homes;
- Demolish blighted structures;
- Redevelop demolished or vacant properties

County Council has not taken any other action on this to date. This is the first request made to Council. The Council will need to provide approval and adoption today of the NSP funds to continue with the HUD funding process. The next step is for Community Development to post the Richland County NSP application information onto the Richland County website no later than November 14, 2008 to start the 15-day public comment period. The application amendment will be submitted to HUD on December 1, 2008 by the Community Development Department. All funds must be used within the statutory deadline of 18 months from receipt of the funds or will be rescinded to HUD for redistribution to other areas.

**C. Financial Impact**

The Richland County General Budget should incur no to minimum financial impact with the NSP funds. No matching funds will be required from the County on NSP. In addition, the NSP program provides 10% administrative costs for the program. The proposed budget below lists the suggested distribution of funding.

**Proposed Budget:**

\$555,465.00	25% of County NSP towards 50% or below median income – RFP #1
\$1,000,000.00	RFP #2 to address County-wide efforts
\$ 150,000.00	Neighborhood Revitalization Efforts in Arthurtown and Ridgewood
\$ 150,000.00	Demolition of unsafe, abandoned housing units in the unincorporated areas
\$ 144,209.00	City set-aside to work with CDC’s in areas of high concentration
\$ 222,185.00	10% Administrative Cost for the life of the program
\$2,221,859.00	Total Funding~ Richland County \$2,221,859

Other than the initial financial and time impact on the Community Development Department, there should be no additional financial impact to the County. NOTE: If the State NSP determines Richland County as an eligible recipient, additional funds may be sought.

**D. Alternatives**

1. County Council can approve the request to adopt the incorporation of the Neighborhood Stabilization Program (NSP) Fund program into the Richland County Community Development Block Grant (CDBG) Program as per the Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA).

2. County Council can not approve the adoption and involvement of the NSP Fund Program.

If the first option is not selected, Richland County will lose \$2.2 million dollars that would have been granted to the County to benefit communities that have foreclosed and abandoned properties.

#### **E. Recommendation**

It is recommended that Council approve the request to adopt the incorporation of the Neighborhood Stabilization Program (NSP) Fund program into the Richland County Community Development Block Grant (CDBG) Program as per the Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA).

**Recommended by:** Valeria D. Jackson **Department:** Community Dev. **Date:** 10/21/08

#### **F. Reviews**

##### **Finance**

Reviewed by: Daniel Driggers

Date: 10/24/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Finance recommendation intentionally withheld and will be added.

##### **Legal**

Reviewed by: Larry Smith

Date: 10/24/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

##### **Administration**

Reviewed by: Tony McDonald

Date: 10/24/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

## Richland County Council Request of Action

**Subject:** Display of Aircraft at Owens Field

### **A. Purpose**

The County Council is being asked to consider approval of a temporary public display of various aircraft at the Owens Downtown Airport.

### **B. Background / Discussion**

The Collins Foundation, an organization that restores and maintains World War II aircraft in flying condition and travels around the nation as a flying museum, has requested that it be allowed to have a static display of its B17, B24 and P51 planes at Owens Field from November 3 to November 5. The Foundation would also like to offer some limited passenger flights during this time.

The Foundation has agreed to provide crowd control and security for the event, would hold the County harmless, and would include the County and Eagle Aviation, the County's Fixed Base Operator (FBO), on its insurance policy covering the event.

The Richland County Airport Commission has endorsed this event, as have the Airport Manager and the FBO.

### **C. Financial Impact**

There is no financial impact associated with this event.

### **D. Alternatives**

The following alternatives should be considered:

1. Approve the event as proposed.
2. Do not approve the event.

### **E. Recommendation**

It is recommended that the Council approve the static display of the aircraft; however, allowing passenger flights during the event is not recommended due to the liability that the County could incur.

**Recommended by:** Tony McDonald    **Department:** Administration    **Date:** 10/22/08

### **F. Reviews**

**Finance**

Reviewed by: David Chambers

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Agree with the recommendation; however, prior to any activity, the Foundation should provide the county a certificate of insurance that names Richland County Government as an additional insured.

**Finance**

Reviewed by: Daniel Driggers

Date: 10/23/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

**Legal**

Reviewed by: Larry Smith

Date: 10/24/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Recommend approval, subject to the County entering into an agreement with the Foundation regarding this event.

**Administration**

Reviewed by: Tony McDonald

Date: 10/24/08

✓ Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Recommend approval as noted above. Concur with comments of the County Attorney.

## Richland County Council Request of Action

**Subject:** Changeable Copy Signs (a/k/a digital signs)

### **A. Purpose**

County Council is requested to consider an Ordinance to amend the Richland County Code of Ordinances; Chapter 26, Land Development; Section 26-180, Signs; so as to allow changeable copy signs under certain conditions.

### **B. Background / Discussion**

Currently, changeable copy signs are prohibited under the County's land development regulations. In an attempt to meet technological advances in the sign industry, staff is recommending that changeable copy signs be allowed in all zoning districts with the following conditions:

- a. Such signs shall remain static at all times – scrolling and/or movement of any kind is prohibited.
- b. The electronic area may not exceed 33% of the sign face.
- c. The message must not change more than four (4) times within any twenty-four (24) hour period of time.
- d. Illumination should be no greater than 7,500 nits during daylight hours and no greater than 500 nits during evening hours.
- e. Signs shall not display red lights or flashing lights.
- f. The bottom of the sign shall be at least ten (10) feet from the ground.

In addition, staff recommends that time and temperature displays be allowed outright, provided they do not exceed twenty (20) square feet per sign face.

### **C. Financial Impact**

Revenue will increase, through permit fees, by issuing licenses for these additional signs.

### **D. Alternatives**

1. Approve the amended language to the Land Development Code, and forward it to the Planning Commission for their recommendation.

2. Approve alternative ordinance language, and forward it to the Planning Commission for their recommendation. Other options include:
  - a. Only allowing changeable time/temperature signs.
  - b. Allowing all changeable copy signs, without regulation.
3. Do not approve any of the options, and leave existing language “as is”.

Three ordinances, representing three options for amending the Land Development Code, are attached for Council’s consideration.

#### **E. Recommendation**

Staff recommends approving Alternative No. 1.

**Recommended by:** Joseph Kocy      **Department:** Planning      **Date:** Sept. 29, 2008

#### **F. Reviews**

##### **Finance**

Reviewed by: Daniel Driggers      Date: 10/23/08  
 Recommend Council approval       Recommend Council denial  
Comments regarding recommendation: No recommendation

##### **Legal**

Reviewed by: Larry Smith      Date: 10/24/08  
 Recommend Council approval       Recommend Council denial  
Comments regarding recommendation: Council discretion.

##### **Administration**

Reviewed by: Tony McDonald      Date: 10/24/08  
 Recommend Council approval       Recommend Council denial  
Comments regarding recommendation: Concur with Planning Director’s recommendation.

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-08HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 26, LAND DEVELOPMENT; ARTICLE VII, GENERAL DEVELOPMENT, SITE, AND PERFORMANCE STANDARDS; SECTION 26-180, SIGNS; SUBSECTION (E), PROHIBITED SIGNS; PARAGRAPH (3), ANIMATED/FLASHING SIGNS AND SIGNS OF ILLUSION; SO AS TO ALLOW CHANGEABLE TIME/TEMPERATURE SIGNS.

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE RICHLAND COUNTY COUNCIL:

F. SECTION I. The Richland County Code of Ordinances, Chapter 26, Land Development; Article VII, General development, Site, and Performance Standards; Section 26-180, Signs; Subsection (e), Prohibited signs; Paragraph (3), Animated/flushing signs and signs of illusion; is hereby amended to read as follows:

- (3) *Animated/flushing signs and signs of illusion.* Signs displaying blinking, flashing, or intermittent lights, or animation, moving parts, or signs giving the illusion of movement; provided, however, time and temperature displays are allowed, but must not exceed twenty (20) square feet per sign face.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. This ordinance shall be enforced from and after \_\_\_\_\_, 2008.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Joseph McEachern, Chair

ATTEST THIS THE \_\_\_\_ DAY

OF \_\_\_\_\_, 2008

\_\_\_\_\_  
Michielle R. Cannon-Finch  
Clerk of Council



RICHLAND COUNTY ATTORNEY'S OFFICE

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Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading:  
Public Hearing:  
Second Reading:  
Third Reading:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_-08HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 26, LAND DEVELOPMENT; ARTICLE VII, GENERAL DEVELOPMENT, SITE, AND PERFORMANCE STANDARDS; SECTION 26-180, SIGNS; SO AS TO CREATE A NEW SECTION THAT WOULD ALLOW DIGITAL DISPLAY DEVICES UNDER CERTAIN CONDITIONS.

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE RICHLAND COUNTY COUNCIL:

SECTION I. The Richland County Code of Ordinances, Chapter 26, Land Development; Article II, Rules of Construction/Definitions; Section 26-22, Definitions; is hereby amended to include in the appropriate alphabetical order, the following definition:

*Sign, changeable copy.* A sign that can be changed at intervals by electronic or mechanical process, or a sign using light emitting diodes (LED).

**G. SECTION II.** The Richland County Code of Ordinances, Chapter 26, Land Development; Article VII, General development, Site, and Performance Standards; Section 26-180, Signs; is hereby amended to create a new subsection to read as follows:

(p) *Changeable copy signs.* Changeable on-premise copy signs are permitted in all zoning districts.

(1) Time and temperature displays are allowed, but must not exceed twenty (20) square feet per sign face.

(2) All other changeable copy signs shall only be permitted with the following restrictions:

a. Such signs shall remain static at all times – scrolling and/or movement of any kind is prohibited.

b. The electronic area may not exceed 33% of the sign face.

c. The message must not change more than four (4) times within any twenty-four (24) hour period of time.

d. Illumination should be no greater than 7,500 nits during daylight hours and no greater than 500 nits during evening hours.

e. Signs shall not display red lights or flashing lights.

f. The bottom of the sign shall be at least ten (10) feet from the ground.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. This ordinance shall be enforced from and after \_\_\_\_\_, 2008.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Joseph McEachern, Chair

ATTEST THIS THE \_\_\_\_\_ DAY

OF \_\_\_\_\_, 2008

\_\_\_\_\_  
Michielle R. Cannon-Finch  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading:  
Public Hearing:  
Second Reading:  
Third Reading:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-08HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 26, LAND DEVELOPMENT; ARTICLE VII, GENERAL DEVELOPMENT, SITE, AND PERFORMANCE STANDARDS; SECTION 26-180, SIGNS; SUBSECTION (E), PROHIBITED SIGNS; SO AS TO DELETE THE PROHIBITION OF PARAGRAPH (3), ANIMATED/FLASHING SIGNS AND SIGNS OF ILLUSION.

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE RICHLAND COUNTY COUNCIL:

**H. SECTION I.** The Richland County Code of Ordinances, Chapter 26, Land Development; Article VII, General development, Site, and Performance Standards; Section 26-180, Signs; Subsection (e), Prohibited signs; Paragraph (3), Animated/flushing signs and signs of illusion; is hereby deleted in its entirety, and the subsequent paragraphs are renumbered accordingly.

(3) ~~Animated/flushing signs and signs of illusion. Signs displaying blinking, flashing, or intermittent lights, or animation, moving parts, or signs giving the illusion of movement.~~

**SECTION II. Severability.** If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

**SECTION III. Conflicting Ordinances Repealed.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION IV. Effective Date.** This ordinance shall be enforced from and after \_\_\_\_\_, 2008.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Joseph McEachern, Chair

ATTEST THIS THE \_\_\_\_ DAY

OF \_\_\_\_\_, 2008

\_\_\_\_\_  
Michielle R. Cannon-Finch  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading:  
Public Hearing:  
Second Reading:  
Third Reading:

## Richland County Council Request of Action

**Subject:** Broad River Sewer Bond Issue – Accrued Interest

### A. Purpose

County Council is requested to approve the use of accrued interest from the Broad River Sewer bond issue toward the completion of the construction project.

### B. Background / Discussion

Background: There have been two bonds issued for the construction of the Broad River Wastewater Treatment Plant. The first was for \$15,500,000.00 and the second for approximately \$16,900,000.00. These funds have been invested in an interest bearing account and have accrued approximately \$2,800,000.00 in interest. These funds are needed for use toward the completion of the construction project.

Discussion: The original budget approved by County Council for this project did not include the accrued interest. The bond attorney's expectations were that the accrued interest would eventually be incorporated into the project budget to assist with offsetting the cost of any change orders.

### C. Financial Impact

Approving the use of accrued interest will be consistent with the financial plan that was developed to fund the construction of the Broad River Wastewater Treatment Plant. Provided the use of this interest is approved, no additional funds should be required.

### D. Alternatives

1. Approve the request to use accrued interest toward the project construction cost.
2. Do not approve the use of the interest.

### E. Recommendation

It is recommended that the accrued interest on the Broad River Sewer Bonds be approved for use toward the construction project.

**Recommended by:** Andy H. Metts  
10/14/08

**Department:** Utilities

**Date:**

### F. Reviews

#### Finance

Reviewed by: Daniel Driggers

Date: 10/21/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: It is always Council discretion as to how funds will be expended. Earned interest is available as stated and is available for appropriation but approval would require a budget amendment. The total appropriation for the project was \$32.4m and approximately \$29.4m has been expended as of 6/30/08.

**Legal**

Reviewed by: Larry Smith

Date: 10/24/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: I would agree with the comments of the Finance Director that it is always within the Councils discretion as it relates to the release of these funds to be used to address change orders. However, it is my opinion that change orders need to be addressed on a case by case basis after the merits of each change order has been evaluated rather than a wholesale approval of change orders.

**Administration**

Reviewed by: Tony McDonald

Date: 10/24/08

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Concur with Finance Director's comments.



## **Richland County Council Request of Action**

**Subject:** Hopkins Community Water Project – Memorandum of Agreement

### **A. Purpose**

County Council is requested to approve a Memorandum of Agreement (MOA) between Richland County and Richland County School District One for the development of the Hopkins Community Water Project.

### **B. Background / Discussion**

Background: Richland County School District One (District) operates on-site water system at the Hopkins Elementary, Hopkins Middle and Gadsden Elementary Schools. These systems contain wells that are capable of providing water to the entire Hopkins Community. A plan has been developed to incorporate these wells into a community water system that will be owned, operated and maintained by the Richland County Utilities Department.

Discussion: Richland County staff members working with District staff have developed a MOA which establishes provisions for each to follow as they contribute to the development of the community water system. The District will transfer the necessary wells and make property available for the erection of an elevated water tank. Once the wells are transferred, the schools will be relieved of any future maintenance responsibilities and will become customers of the community water systems.

The County will assume ownership, operation and maintenance responsibilities of the existing SHEC approved wells. The County has already initiated an engineering design contract to connect these wells and to construct a distribution system to transport clean drinking water to the community. The County will be responsible for the complete operation of the water system to include monthly billing and collections.

### **C. Financial Impact**

A Rural Development Grant/Loan along with a financial commitment from both SC DHEC and Richland County will supply the funding to construct the entire water system. No additional funds should be required for construction.

The community water system will be established as an enterprise fund where monthly user fees will be collected to offset operating cost.

### **D. Alternatives**

1. Approve the MOA as drafted.
2. Do not approve the MOA.

**E. Recommendation**

It is recommended that Council approve the MOA between Richland County and the School Districted as drafted.

**Recommended by:** Andy H. Metts      **Department:** Utilities      **Date:**  
10/14/08

**F. Reviews**

**Legal**

Reviewed by: Larry Smith      Date: 10/27/08  
✓ Recommend Council approval       Recommend Council denial  
Comments regarding recommendation: Recommend approval as amended.

**Administration**

Reviewed by: Tony McDonald      Date: 10/27/08  
✓ Recommend Council approval       Recommend Council denial  
Comments regarding recommendation:

**STATE OF SOUTH CAROLINA )            AGREEMENT**  
**COUNTY OF RICHLAND            )**

This Memorandum hereinafter referred to as “Memorandum,” is entered into and to be effective from \_\_\_\_\_, by and between **Richland County School District One** (hereinafter known as the “District”) and **Richland County** (hereinafter known as the “County”).

The parties to the Memorandum, subject to applicable laws, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree to the following:

1. It is the County’s intent to construct and maintain a system of water and sewer services for areas of lower Richland County and that the District will receive those services in accordance with the provisions delineated in this Memorandum. The construction of the water and sewer project is contingent upon the availability of funds and authorization of County Council. The County has applied for a Rural Development grant/loan to fund the projects. The water and sewer projects, although they will serve the same general area, are independent of the other.

2. General Provisions:

Water Project:

- A. Upon notification of the award of grant funds for the water project and authorization from County Council to proceed, the County will begin the process of designing a water distribution system, elevated storage tank and connections for the schools and eligible homeowners to the new water system.
- B. Upon completion and approval of the design of the water project or after ninety (90) days (the commencement of the starting day for the ninety (90) day period shall be the date of approval of this agreement by the “District”), whichever shall occur first, the District will transfer ownership along with all easements and right-of-ways of the wells and appurtenances as determined jointly by the District and County. The County will accept full operational responsibility for the wells and appurtenances on the Hopkins Elementary School, Hopkins Middle School and Gadsden Elementary School property. The County will hold harmless the District to the extent permitted by law as to any claims relating to the wells and appurtenances or operations of such while the County has full operational responsibility of the above named properties.
- C. The District will be relieved of all current electrical, maintenance, chemical addition and paid operator cost associated with the operation of the wells described herein upon transfer of ownership of the wells to the County.

- D. The District will pay monthly usage fees, as will be previously established by County Council, once the County begins operation of the existing wells. The monthly usage fees shall be the only cost to the district. Thus there shall be no charges for tap fees for connection of water and/or fire lines. The district understands that the monthly usage fee for Gadsden will be determined as a basis of operator cost versus actual water usage until such time as Gadsden Elementary is connected to regional water service.
- E. The District understands that the proposed water system may require an elevated storage tank and that the County is requesting additional land to locate this tank. As a further consideration, the District suggests any unused portions of the land previously conveyed to the County by the District for site of emergency services on the Hopkins Middle School campus be used for such purpose, and in furtherance of that goal, the District agrees to enlarge that site by an additional acre to be conveyed to the County by the District within ninety (90) days of approval of the design.

If the County does not notify the district that there is a need for this land within three (3) years of the “District” approval of this agreement, this section of the agreement will no longer be in effect. Furthermore, the District is no longer obligated to convey this property.

- F. The site for a storage tank shall be reviewed by and certified for student safety by licensed engineers and the State Department of Education, Office of School Facilities.
- G. In the event that any additional land is required, up to one (1) acre of Richland County School District property will be conveyed and the fair market value shall be determined and appropriate compensation shall be agreed upon by both parties.
- H. The County will pursue additional funds to extend a water line from the Hopkins community to the Gadsden Elementary School. Once these funds are identified, secured and the design completed, the County will initiate a project to connect that school to the regional water system.
- I. Within the same ninety (90) day period referenced in Section (B), “Richland County” and the “District” will approve and execute the easements, deeds, right-of-ways...that must be in place to provide access to the wells and water systems of Hopkins Middle School, Hopkins Elementary School and Gadsden Elementary School. This will include delineation of who is authorized to enter the site on behalf of the “County” and how that will be communicated to the “District.”

If such approvals are not completed within this time frame, without a mutually agreed upon extension of time to complete the same, this agreement will terminate and shall no longer be in effect.

3. Further, the parties agree as follows:

- A. The County, or its assignee(s) or sub-lessee(s), shall be responsible for payment of any utilities necessary for it to use the property for the purposes hereinabove stated. Any revenue generated by operation of the property is the property of the County.

Note: No agreement or sub-lease shall be executed without prior written consent of the “District.”

Should funds not be appropriated by the County during any of its fiscal years necessary to fulfill the County’s monetary obligation(s) under this Agreement, this Agreement shall immediately terminate, without further obligation by the District and the property shall be surrendered to the District as provided herein.

- B. Failure of the County to perform any of its obligations or any condition of the Agreement shall constitute default. If the County remains in default within thirty (30) days after receipt of written notice from the District specifying the obligation or condition that the County has failed to perform, and the County fails to cure such default within thirty (30) days after receipt of written notice as provided herein, the District may, at District’s option, terminate this Agreement and demand return of the wells. If the wells are retuned, the District shall reimburse the County for costs associated with the upgrades and improvements of the wells and the system.
- C. With the exception of items noted in the section entitled “RESERVATIONS”, as long as the County performs all things required of them by this Agreement, it shall have the peaceful and quite enjoyment of the property during the term of this Agreement.
- D. There is hereby reserved to the District, its successors and assigns, for the benefit of the public:

The County shall not assign this Agreement to any party without the written consent of the District and no assignee or lessee may use this property as a school or for school purposes without the written consent of the District. No assignee or lessee shall assign this Agreement without the written consent of the District.

- E. Both parties agree that this Memorandum is supported by adequate consideration in the form of the mutual promises and covenants contained herein.
- F. Both parties agree to be responsible for the actions of its employees and/or students while acting within the scope of their official duties to the extent consistent with the waiver of immunity provided by the South Carolina Tort Claims Act, Section 15-78-10 et seq. of the Code of Laws of South Carolina (1976), as amended.

- G. Throughout the life of this Agreement, the County and the District each will maintain at its expense a commercial general liability policy with coverage sufficient to meet the limits under the South Carolina Tort Claims Act in Section 15-78-120 (a) (1) and (2), as may be amended, or a comparable self-funded liability program. That upon improvements made by the County, or its assignee(s), the County or its assignee(s) will provide a property insurance policy and a certificate of insurance thereof, which covers all improvements in the form of \_\_\_\_\_ on “District” property. This policy will be issued by an insurer rated A or better by Best’s or a comparable rating service. Any subsequent increase in the District’s GCL Policy premium as a result of any improvements made by the County, or its assignee(s), of the property, or as a result of the activities thereon, will be the responsibility of the County or its assignee(s); within any additional costs for such premiums to be borne by the County, or its assignee(s).
- H. If during the term of this memorandum, it is found that a specific clause of the Memorandum is illegal under either federal or state laws, the remainder of the Memorandum not affected by such ruling shall remain in force.
- I. All notices or other communications required or permitted to be given pursuant to this Memorandum shall be in writing and shall be deemed to have been given or delivered when deposited in the mail, postage prepaid, registered or certified mail, return receipt requested, or delivered to a private courier providing evidence of receipt as part of the services, and addressed to the parties as follows:
- Richland County  
Attn: Richland County Administrator  
2020 Hampton Street  
P.O. Box 192  
Columbia, South Carolina 29202
- Richland County School District One  
Attn: Superintendent  
1616 Richland Street  
Columbia, South Carolina 29201
- J. This Memorandum may not be modified or amended except by a written instrument signed by or on behalf of both parties by their duly authorized officers. No amendment, modification, or termination of this Memorandum and no waiver of any provision or consent required hereunder shall be valid unless consented to in writing by both parties.

K. This Memorandum constitutes the entire Memorandum between the parties regarding the matters set forth herein. No amendment to this Memorandum shall be effective unless reduced to writing, executed by both parties, and approved by appropriate legal process. This Memorandum shall be interpreted pursuant to the laws of the State of South Carolina.

**OTHER TERMS AND CONDITIONS**

The County is hereby to use the property in an “as-is” condition and the County, or its assignee(s) or lessee(s), will be responsible for maintenance of the property, any existing facilities, and any capital improvements or equipment installed at or on the property by the County or its assignee(s) or lessee(s). Any capital improvements or equipment installed at or on the property by the County or its assignee(s) or lessee(s) will remain the property of the County, or its assignee(s) or lessee(s), and will, at the option of the District, be removed upon cancellation or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Memorandum on the respective dates indicated below.

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Richland County School District One**

By: \_\_\_\_\_  
Allen J. Coles, Superintendent

Date: \_\_\_\_\_

**Richland County**

By: \_\_\_\_\_  
County Administrator

Date: \_\_\_\_\_